

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL 75-7168

United States Court of Appeals

For the Second Circuit.

ANTHONY J. CALI,

Plaintiff-Appellant,

-against-

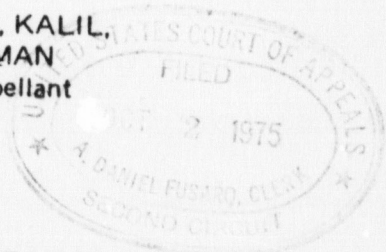
JAPAN AIRLINES CO., LTD., SCANDINAVIAN AIRLINES
SYSTEM, SCANDINAVIAN AIRLINES SYSTEM, INC., and
KLM ROYAL DUTCH AIRLINES,

Defendants-Appellees.

*On Appeal from the United States District Court
for the Eastern District of New York*

Joint Appendix

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PERTINENT DOCKET ENTRIES

10-26-73 Complaint and Annexed Interrogatories
filed.

1-21-74 Answers of KLM and JAL filed.

1-22-74 Answer of SAS and SAS, Inc. filed.

3-14-74 By DOOLING, J. - Conference memorandum
and order dated 3-6-74 directing parties to move ahead
on convention-statute point as quickly as possible.

4-2-74 Amendment to Defendant KLM Answer filed.

4-2-74 Amendment to Defendant JAL Answer filed.

4-4-74 Amendment to Defendant's SAS, SAS, Inc.,
Answer filed.

6-26-74 Notice of Defendant's Motion for
Separate Trial, ret. 7-8-74 filed.

6-28-74 Notice of motion for an order for partial
summary judgment in favor of Plaintiff filed.

7-5-74 Notice of motion for summary judgment
filed.

8-20-74 By DOOLING, J. - Memorandum and order
dated 8-20-74 denying plaintiff's motion for summary judgment
filed.

11-6-74 By DOOLING, J. - Memorandum and Order
dated Nov. 6, 1974 filed that plaintiff's motion for re-
consideration filed 9-4-74 is denied.

1-22-75 Notice of Motion filed to dismiss the
complaint.

1-23-75 JAL's Notice of Motion filed re: to
dismiss by defendant.

2-4-75 By DOOLING, J. - Order dated 2/3/75 filed
that this case is dismissed as to defendants' Scandinavian
Airlines System, Scandinavian Airlines System, Inc., and
KLM Royal Dutch Airlines and that Judgment be entered that
nothing be taken from those defendants by plaintiff.

2-4-75 By DOOLING, J. - Order dated 2/3/75 filed that the Clerk enter judgment that plaintiff take nothing as against defendant JAL and that the action is dismissed against defendant JAL without prejudice to a later action based on any alleged infringements occurring after 10/26/73.

2-5-75 Judgment dated 2-5-75 that plaintiff take nothing as against defendants' Scandinavian Airlines System, Scandinavian Airlines Systems, Inc., and KLM Royal Dutch Airlines and the action is dismissed as against such defendants filed.

2-6-75 Judgment dated 2-5-75 that plaintiff take nothing as against defendant Japan Airlines Co., Ltd. and the action is dismissed as against Japan Airlines Co., Ltd., and the action is dismissed without prejudice filed.

3-4-75 Notice of Appeal filed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
: ANTHONY J. CALI,
:

Plaintiff,
:

v.
:

JAPAN AIRLINES CO., LTD.,
:

and
:

SCANDINAVIAN AIRLINES SYSTEM &
:

SCANDINAVIAN AIRLINES SYSTEM, INC.,
:

and
:

KLM ROYAL DUTCH AIRLINES,
:

Defendants.
:-----X

Civil Action No.

COMPLAINT FOR PATENT INFRINGEMENT
AND ANNEXED INTERROGATORIES
PURSUANT TO RULE 33(a) F.R.C.P.

FIRST CAUSE OF ACTION

1. Plaintiff, Anthony J. Cali (CALI), is a resident of Hialeah, Florida.

2. This action arises under the patent laws of the United States and jurisdiction is conferred on this Court by 28 U.S.C. §1338 and the venue is placed in this Court by 28 U.S.C. §1400.

3. On August 9, 1966, United States Letters Patent No. 3,265,290 were duly and legally issued to CALI for an invention in axial flow compressors for jet engines. This patent has not been assigned.

4. Defendant, Japan Air Lines Co., Ltd. (JAL) has a regular and established place of business and has committed infringing acts in this district.

5. JAL has done business in the State of New York as a commercial airline, at least since 1955 and has been licensed to conduct a commercial airline business in the State of New York since 1955.

6. Upon information and belief JAL has paid taxes to the State of New York in accordance with its license to conduct business as a commercial airline in New York.

7. JAL has received permission from the United States Civil Aeronautics Board (CAB) and other United States authorities to conduct regular and permanent airplane travel on regularly established routes in and to the United States and its territories and possessions. In such airplane travel, JAL has substantially infringed said patent.

8. JAL has conducted operations, and plans to continue operations on a permanent basis in and to the United States and its possessions.

9. JAL has been authorized and has conducted regular airplane travel from points outside the United States to Guam, Hawaii, New York City, San Francisco, Los Angeles, Alaska and Chicago.

10. JAL has regular and established sales offices in the following places in the United States:

Honolulu	New York	Detroit
San Francisco	Boston	St. Louis
Seattle	Philadelphia	Washington
Los Angeles	Chicago	Miami
San Diego	Cleveland	Dallas

11. JAL conducts both passenger and cargo service of a regular and continuous nature to and from the United States.

12. JAL owns substantial assets and property in the United States.

13. Upon information and belief, JAL's airplanes which have incorporated infringing parts are either owned by JAL and/or owned by other United States persons or parties whose names are not yet known and are operated by JAL as owned by title or equitable interest such as mortgage, lease or other financial arrangement.

14. JAL has numerous maintenance facilities and operations in the United States and its territories and possessions.

15. Upon information and belief, JAL has flown hundreds of thousands or more persons from and to United States cities on airlines incorporating the infringing structures.

16. Defendant has and continues to infringe by making, selling or using the patented invention, and such infringement has been substantial.

17. Defendant's use of said patented invention is not privileged under 35 U.S.C. §272 and to construe defendant's use to be non-infringement would be unconstitutional and deprive plaintiff of his exclusive rights and property rights, under the Constitution of the United States and the United States Patent Laws without due process of law.

18. Defendant JAL has had notice of plaintiff's aforesaid patent and infringement by letter of May 22, 1973.

19. The patent in suit has been widely used and licensed to major airlines in the United States, and has achieved substantial commercial success.

WHEREFORE, plaintiff demands an award of past damages in the amount of \$75,000.00 and an assessment of costs against the defendant and injunctive relief against future infringement.

JURY TRIAL DEMANDED.

SECOND CAUSE OF ACTION

20. Plaintiff, Anthony J. Cali (CALI), is a resident of Hialeah, Florida.

21. This action arises under the patent laws of the United States and jurisdiction is conferred on this Court by 28 U.S.C. §1338 and the venue is placed in this Court by 28 U.S.C. §1400.

22. On August 9, 1966, United States Letters Patent No. 3,265,290 was duly and legally issued to CALI for an invention in axial flow compressors for jet engines. This patent has not been assigned.

23. Defendants Scandinavian Airlines Sytesm (SAS) and Scandinavian Airlines Systems, Inc. (SAS INC) have a regular and established place of business and have committed infringing acts in this district.

24. SAS INC. is a corporation of the State of New York for well over 25 years and SAS does business in the United States through SAS INC.

25. Upon information and belief, SAS INC. is wholly owned by SAS. SAS INC. is controlled by SAS.

26. Upon information and belief, SAS INC. has paid United States, Federal and New York State taxes for years past.

27. SAS and/or SAS INC. have received permission from the United States Civil Aeronautics Board (CAB) and other United States authorities to conduct regular and permanent airplane travel on regularly established routes in and to the United States and its territories and possessions. In such airplane travel, SAS and/or SAS INC. have substantially infringed said patent.

28. SAS and/or SAS INC. have been authorized and have conducted regular airplane travel from points outside the United States to many cities in the United States.

29. SAS INC. and/or SAS own substantial assets and property in the United States.

30. Upon information and belief, SAS INC. and/or SAS's airplanes which have incorporated infringing parts are either owned by SAS INC. and/or owned by other United States persons or parties whose names are not yet known and are operated by SAS INC. and/or SAS as owned by title or equitable interest such as mortgage, lease or other financial arrangement.

31. SAS INC. and/or SAS have numerous maintenance facilities and operations in the United States and its territories and possessions.

32. Upon information and belief, SAS INC. and/or SAS have flown hundreds of thousands or more persons from and to United States cities on airlines incorporating the infringing structures.

33. Defendants have and continue to infringe by making, selling or using the patented invention, and such infringement has been substantial.

34. Defendants' use of said patented invention is not privileged under 35 U.S.C. §272 and to construe Defendants' use to be non-infringement would be unconstitutional and deprive plaintiff of his exclusive rights and property rights, under the Constitution of the United States and the United States Patent Laws without due process of law.

35. Defendants have had notice of plaintiff's aforesaid patent and infringement by letter of June 11, 1973.

36. The patent in suit has been widely used and licensed to major airlines in the United States and has achieved substantial commercial success.

WHEREFORE, Plaintiff demands an award of past damages in the amount of \$75,000.00 and an assessment of costs against the Defendants and injunctive relief against future infringement.

JURY TRIAL DEMANDED.

THIRD CAUSE OF ACTION

37. Plaintiff, Anthony J. Cali (CALI), is a resident of Hialeah, Florida.

38. This action arises under the patent laws of the United States and jurisdiction is conferred on this Court by 28 U.S.C. §1338 and the venue is placed in this Court by 28 U.S.C. §1400.

39. On August 9, 1966, United States Letters Patent No. 3,265,290 were duly and legally issued to CALI for an invention in axial flow compressors for jet engines. This patent has not been assigned.

40. Defendant KLM Royal Dutch Airlines (KLM) has a regular and established place of business and has committed infringing acts in this district.

41. Defendant KLM receives a sizable portion of its transportation revenues from United States citizens.

42. Defendant KLM receives substantial proceeds as a result of a stock offering approved by the United States Securities and Exchange Commission and is listed for trade on the New York Stock Exchange.

43. Approximately 50% of the stock issued in connection with its first offering in the United States were sold in the United States to United States citizens.

44. Defendant has consented to the jurisdiction of the U.S. SEC and the CAB and is in the same position, for purposes of the patent laws of the United States, as Pan American, TWA and other intercontinental carriers.

45. KLM has conducted operations, and plans to continue operations on a permanent basis in and to the United States and its possessions.

46. KLM has been authorized and has conducted regular airplane travel from points outside the United States to a substantial number of cities in the United States.

47. KLM has regular and established sales offices in a large number of places in the United States.

48. KLM conducts both passenger and cargo service of a regular and continuous nature to and from the United States.

49. KLM owns substantial assets and property in the United States.

50. Upon information and belief, KLM's airplanes which have incorporated infringing parts are either owned by KLM and/or owned by other United States persons or parties whose names are not yet known and are operated by KLM as owner by title or equitable interest such as mortgage, lease or other financial arrangement.

51. KLM has numerous maintenance facilities and operations in the United States and its territories and possessions.

52. Upon information and belief, KLM has flown hundreds of thousands or more persons from and to United States cities on airlines incorporating the infringing structures.

53. Defendant has and continues to infringe by making, selling or using the patented invention, and such infringement has been substantial.

54. Defendant's use of said patented invention is privileged under 35 U.S.C. §272 and to construe defendant's use to be non-infringement would be unconstitutional and deprive plaintiff of

not

*done
2/24*

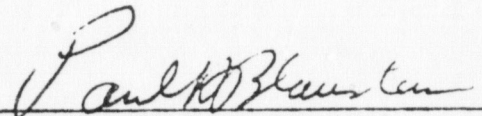
his exclusive rights and property rights, under the Constitution of the United States and the United States Patent Laws without due process of law.

55. Defendant KLM has had notice of plaintiff's aforesaid patent and infringement by letter of September 10, 1971.

56. The patent in suit has been widely used and licensed to major airlines in the United States, and has achieved substantial commercial success.

WHEREFORE, plaintiff demands an award of past damages in the amount of \$75,000.00 and an assessment of costs against the defendant and injunctive relief against future infringement.

JURY TRIAL DEMANDED.



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Dated: October 25, 1973

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X	
ANTHONY J. CALI,	:
Plaintiff	:
v.	:
JAPAN AIRLINES CO., LTD.,	:
and	:
SCANDINAVIAN AIRLINES SYSTEM &	:
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:
and	:
KLM ROYAL DUTCH AIRLINES,	:
Defendants	:
----- X	

Civil Action No.
73 C 1596 (JFD)

ANSWER OF
JAPAN AIRLINES CO., LTD.

1. Admits the allegations of paragraph 1.
2. Admits that plaintiff's alleged first cause of action arises under the Patent Laws of the United States; that this Court's jurisdiction over the subject matter is based on 28 U.S.C. §1338(a) and that venue is based on 28 U.S.C. §1400(b); except as so admitted denies each allegation of paragraph 2.
3. Admits that on August 9, 1966 patent 3,265,290 entitled "Axial Flow Compressors for Jet Engines" issued to Anthony J. Cali; denies that said patent was duly or legally issued and denies that it is for an invention; is without knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 3 that this patent has not been assigned.
4. Admits that defendant, Japan Air Lines Co., Ltd. (JAL), has a regular and established place of business in this district; except as so admitted denies each allegation of paragraph 4.

5. Admits the allegations of paragraph 5.

6. Admits that it has paid sales taxes to the State of New York and occupancy and use taxes to the City of New York based upon its use of personal property and occupancy of leased premises; avers that it has paid no taxes relating to or on account of its ownership or use of aircraft or engines or engine parts; except as so admitted denies each allegation of paragraph 6.

7. Admits that it has received permission from the United States Civil Aeronautics Board (CAB) in the form of a Foreign Air Carrier Permit and amendments thereto which authorizes JAL to engage in foreign air transportation of persons, property and mail between a point or points in Japan and various specified points in the United States, its territories and possessions; except as so admitted denies each allegation of paragraph 7.

8. Admits that it has engaged in the foreign air transportation of persons, property and mail pursuant to the Foreign Air Carrier Permit and amendments thereto issued by the CAB; avers that as presently advised it has no plans to discontinue its operations in and to the United States, its territories and its possessions pursuant to said Foreign Air Carrier Permit and amendments thereto; except as so admitted denies each allegation of paragraph 8.

9. Admits that it has been authorized to conduct and has conducted scheduled foreign air transportation of persons, property and mail from points outside the United States to Agana, Guam; Honolulu, Hawaii; New York City, New York; San Francisco, California; Los Angeles, California; and Anchorage, Alaska; except as so admitted denies each allegation of paragraph 9.

10. Admits the allegations of paragraph 10.

11. Admits that pursuant to its Foreign Air Carrier Permit and amendments thereto, JAL has engaged in the foreign air transportation of persons, property and mail on a regular and scheduled basis between a point or points in Japan and various specified points in the United States; except as so admitted denies each allegation of paragraph 11.

12. Admits that it owns ground equipment; supplies and equipment for aircraft; office equipment and supplies; leasehold improvements and other personalty located at various airports and facilities within the United States, its territories and possessions; that it owns residences for certain of its regional managers within the United States; except as so admitted denies each allegation of paragraph 12.

13. Admits that it owns certain Douglas DC-8 aircraft and Pratt & Whitney JT-4A engines; except as so admitted denies each allegation of paragraph 13.

14. Admits that it has a number of service facilities and storage facilities within the United States, its territories and possessions but avers that it maintains no engine overhaul or repair facilities and stores no major parts for aircraft engines within the United States, its territories and possessions; except as so admitted denies each allegation of paragraph 14.

15. Admits that pursuant to its operations under its Foreign Air Carrier Permit and amendments thereto it has transported hundreds of thousands of passengers between a point or points in Japan and various specified points in the United States, its territories and possessions including a number of passengers transported on Douglas DC-8 aircraft equipped with Pratt & Whitney JT-4A engines; except as so admitted denies each allegation of paragraph 15.

16. Denies each allegation of paragraph 16.

17. Denies each allegation of paragraph 17.

18. Admits that it has received a letter dated May 22, 1973 from Paul H. Blaustein, plaintiff's attorney; except as so admitted denies each allegation of paragraph 18.

19. Admits that, in settlement of other litigation, the patent in suit has been licensed to certain major airlines in the United States; except as so admitted denies each allegation of paragraph 19.

Further answering the complaint defendant JAL avers as follows:

19 A. Patent 3,265,290 and each of its claims are invalid and void for each of the following reasons:

(a) the alleged invention was described in a printed publication in this country and was in public use in this country more than one (1) year prior to the date of the application for said patent in the United States (35 U.S.C. §102(b));

(b) any differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains (35 U.S.C. §103);

(c) the patent claims fail particularly to point out and distinctly to claim the subject matter of the alleged invention (35 U.S.C. §112).

19 B. JT-4A engine Serial No. 611623 was purchased from Pan American Airways in December 1964 and at the time of the purchase contained a fairing which had been welded to the 7th stage vane and shroud assembly. Upon information and belief, said engine had been welded at Pan American's jet engine overhaul facility by Pan American in the regular course of its business of performing maintenance services pursuant to a royalty free shopright and license retained by Pan American under patent 3,265,290.

19 C. Engine Serial No. 611623 acquired by defendant JAL from Pan American which incorporated a fairing welded to the 7th stage vane and shroud assembly is licensed under patent 3,265,290.

19 D. All of the JT-4A engines originally acquired by JAL from Pratt & Whitney and owned by JAL within a period of six (6) years prior to the date of the complaint herein had incorporated therein during said period tie bolts pursuant to Pratt & Whitney Service Bulletin 1040 and revisions thereto. None of said engines constitutes an infringement of any of the claims of patent 3,265,290.

19 E. All of the accused Pratt & Whitney JT-4A engines owned and operated by defendant JAL are installed on DC-8 aircraft and operated pursuant to defendant JAL's Foreign Air Carrier Permit and amendments thereto between a point or points in Japan and intermediate or terminal points in the United States, its territories or possessions. Each of the accused JT-4A engines is, and has been, used exclusively for the needs of defendant's DC-8 aircraft and is not sold in or used for the manufacture of anything to be sold in or exported

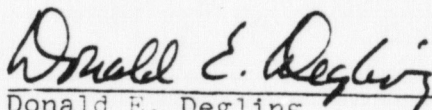
from the United States. As the DC-8 aircraft in which the accused JT-4A engines are installed are aircraft of Japan, a country which affords similar privileges to aircraft of the United States, the temporary presence of defendant's aircraft containing the accused JT-4A engines in the United States does not constitute infringement of patent 3,265,290. (35 U.S.C. §272)

WHEREFORE, defendant JAL prays that:

- (a) the complaint be dismissed with prejudice;
- (b) patent 3,265,290 be adjudged invalid and void and not infringed by defendant;
- (c) plaintiff and those in privity with him be enjoined from bringing or threatening to bring suit upon said patent, or charging infringement thereof, against defendant, its successors or assigns;
- (d) defendant be awarded costs and reasonable attorneys' fees; and
- (e) defendant be granted such other and further relief as this Court may deem proper.

Dated: January 18, 1974.
New York, New York

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X	
ANTHONY J. CALI,	:
Plaintiff	:
v.	:
JAPAN AIRLINES CO., LTD.,	:
and	:
SCANDINAVIAN AIRLINES SYSTEM &	:
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:
and	:
KLM ROYAL DUTCH AIRLINES,	:
Defendants	:
----- X	

Civil Action No.
73 C 1596 (JFD)

ANSWER OF
KLM ROYAL DUTCH AIRLINES

37. Admits the allegations of paragraph 37.

38. Admits that plaintiff's alleged third cause of action arises under the Patent Laws of the United States; that this Court's jurisdiction over the subject matter is based on 28 U.S.C. §1338(a) and that venue is based on 28 U.S.C. §1400(b); except as so admitted denies each allegation of paragraph 38.

39. Admits that on August 9, 1966 patent 3,265,290 entitled "Axial Flow Compressors for Jet Engines" issued to Anthony J.Cali; denies that said patent was duly or legally issued and denies that it is for an invention; is without knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 39 that this patent has not been assigned.

40. Admits that defendant KLM Royal Dutch Air Lines (KLM) has a regular and established place of business in this district; except as so admitted denies each allegation of paragraph 40.

41. Admits that a portion of its transportation revenues are received from sales in the United States to customers some of whom are United States citizens; except as so admitted denies each allegation of paragraph 41.

42. Admits that it received proceeds from stock offerings in the United States and abroad in 1957, 1966 and 1969 and from an offering of convertible debentures in the United States and abroad in 1959; admits that its stock and debenture offerings were duly registered with the United States Securities and Exchange Commission; admits that the common stock of defendant KLM is listed and traded on the Stock Exchange in Amsterdam, Brussels, Dusseldorf, Frankfurt, Hamburg and New York; except as so admitted denies each allegation of paragraph 42.

43. Denies the allegation of paragraph 43.

44. Admits that certain of its activities are subject to the jurisdiction of the United States Securities and Exchange Commission and the Civil Aeronautics Board; except as so admitted denies each allegation of paragraph 44.

45. Admits that it has engaged in the foreign air transportation of persons, property and mail pursuant to the Foreign Air Carrier Permits and amendments thereto issued by the Civil Aeronautics Board; avers that as presently advised it has no plans to discontinue its operations in and to the United States pursuant to said Foreign Air Carrier Permits and amendments thereto; except as so admitted denies each allegation of paragraph 45.

46. Admits that it has been authorized to conduct and has conducted scheduled foreign air transportation of persons, property and mail from points outside the United States to

New York, New York, Houston, Texas, Chicago, Illinois, Anchorage, Alaska, and Miami, Florida; except as so admitted denies each allegation of paragraph 46.

47. Admits that it has sales offices in a number of places in the United States; except as so admitted denies each allegation of paragraph 47.

48. Admits that pursuant to its Foreign Air Carrier Permits and amendments thereto, KLM engages in foreign air transportation of persons, property and mail on a regular and scheduled basis between points in The Netherlands and various specified points in the United States; except as so admitted denies each allegation of paragraph 48.

49. Admits that it owns ground equipment; supplies and equipment for aircraft; office equipment and supplies; leasehold improvements and other personalty located at various airports and facilities within the United States; except as so admitted denies each allegation of paragraph 49.

50. Admits that it formerly owned certain Douglas DC-8 aircraft equipped with Pratt & Whitney JT-4A engines and now owns six (6) JT-4A engines; except as so admitted denies each allegation of paragraph 50.

51. Admits that it has service, storage, sales and administrative facilities within the United States but avers that it maintains no engine overhaul or repair facilities within the United States; except as so admitted denies each allegation of paragraph 51.

52. Admits that pursuant to its operations under its Foreign Air Carrier Permits and amendments thereto it has transported hundreds of thousands of passengers from and to United States' cities including a number of passengers transported on Douglas DC-8 aircraft equipped with Pratt & Whitney JT-4A engines; except as so admitted denies each allegation of paragraph 52.

53. Denies each allegation of paragraph 53.

54. Admits that any use of the alleged invention by KLM is privileged under 35 U.S.C. §272; except as so admitted denies each allegation of paragraph 54.

55. Admits that it has received a letter dated September 10, 1971 from Paul H. Blaustein, plaintiff's attorney; except as so admitted denies each allegation of paragraph 55.

56. Admits that, in settlement of other litigation, the patent in suit has been licensed to certain major airlines in the United States; except as so admitted denies each allegation of paragraph 56.

Further answering the complaint defendant KLM avers as follows:

56 A. Patent 3,265,290 and each of its claims are invalid and void for each of the following reasons:

(a) the alleged invention was described in a printed publication in this country and was in public use in this country more than one (1) year prior to the date of the application for said patent in the United States (35 U.S.C. §102(b));

(b) any differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains (35 U.S.C. §103);

(b) the patent claims fail particularly to point out and distinctly to claim the subject matter of the alleged invention (35 U.S.C. §112).

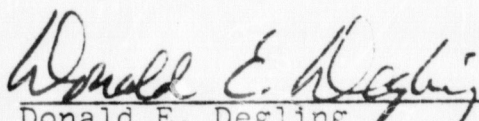
56 B. Certain of the JT-4A engines originally acquired by KLM from Pratt & Whitney and owned by KLM within a period of six (6) years prior to the date of the complaint herein had incorporated therein during said period of time tie bolts pursuant to Pratt & Whitney Service Bulletin 1040 and revisions thereto. None of said engines containing tie bolts constitutes an infringement of any of the claims of patent 3,265,290.

56 C. All of the accused Pratt & Whitney JT-4A engines owned and operated by defendant KLM were installed on DC-8 aircraft and operated pursuant to defendant KLM's Foreign Air Carrier Permit and amendments thereto between a point or points in The Netherlands and intermediate or terminal points in the United States. Each of the accused JT-4A engines was used exclusively for the needs of defendant's DC-8 aircraft and was not sold or used for the manufacture of anything to be sold in or exported from the United States. As the DC-8 aircraft in which the accused JT-4A engines were installed were aircraft of The Netherlands, a country which affords similar privileges to aircraft of the United States, the temporary presence of defendant's aircraft containing the accused JT-4A engines in the United States did not constitute infringement of patent 3,265,290 (35 U.S.C. §272).

WHEREFORE, defendant KLM prays that:

- (a) the complaint be dismissed with prejudice;
- (b) patent 3,265,290 be adjudged invalid and void and not infringed by defendant;
- (c) plaintiff and those in privity with him be enjoined from bringing or threatening to bring any suit upon said patent, or charging infringement thereof, against defendant, its successors or assigns;
- (d) defendant be awarded costs and reasonable attorneys' fees; and
- (e) defendant be granted such other and further relief as this Court may deem proper.

Dated: January 18, 1974.
New York, New York


Donald E. Degling
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Royal Dutch Air Lines
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(212) 826-1050

Of Counsel:

James M. Estabrook
Fish & Neave
277 Park Avenue
New York, N.Y. 10017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x
ANTHONY J. CALI,	:
	:
Plaintiff,	: Civil Action No.
	: 73 C 1596 (JFD)
-against-	:
JAPAN AIRLINES CO., LTD.,	: ANSWER OF DEFENDANTS
and	: SCANDINAVIAN AIRLINES
SCANDINAVIAN AIRLINES SYSTEM &	: SYSTEM & SCANDINAVIAN
SCANDINAVIAN AIRLINES SYSTEM, INC.,	: <u>AIRLINES SYSTEM, INC.</u>
and	:
KLM ROYAL DUTCH AIRLINES,	:
	:
Defendants.	:
-----	x

Defendants Scandinavian Airlines System ("SAS") and Scandinavian Airlines System, Inc. ("SAS, Inc."), by Hale Russell & Stentzel, their attorneys, answer the Second Cause of Action in the complaint herein, as follows:

1. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 20.

2. Answering Paragraph 21: Admit that plaintiff's second cause of action is pleaded under the patent laws of the United States, that the jurisdiction of this court is invoked under 28 U.S.C. §1338, and that venue is claimed under 28 U.S.C. §1400; and deny each and every other allegation in said paragraph.

3. Answering Paragraph 22: Admit that on August 9, 1966, Patent No. 3,265,290 was issued to Anthony J. Cali for "Axial Flow Compressors for Jet Engines"; deny that said patent

was duly and legally issued and that it was issued for an invention; and deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegation that said patent has not been assigned.

4. Answering Paragraphs 23, 24, 27 and 28: Admit that SAS at all relevant times was and is a consortium comprised of the flag air carrier corporations of Denmark, Norway and Sweden (respectively, Det Danske Luftfartselskab A/S, Det Norske Luftfartselskap A/S and Aktiebolaget Aerotransport), having its principal office in Bromma, Sweden, and was and is engaged in foreign air transportation between five cities in the United States and points in Europe and Asia under Foreign Air Carrier permits issued by the Civil Aeronautics Board of the United States pursuant to Section 402 of the Federal Aviation Act of 1958, as amended; admit that SAS, Inc. at all relevant times was and is a New York corporation having its principal place of business in Queens, New York; and deny each and every other allegation in said paragraphs.

5. Admit the allegations in Paragraph 25.

6. Answering Paragraph 26, admit that SAS, Inc. has paid New York State taxes for years past and deny that it has paid United States taxes.

7. Answering Paragraph 29, admit that SAS and SAS, Inc. own assets and property in the United States and respectfully decline to characterize said assets and property as "substantial" or "insubstantial".

8. Answering Paragraph 30: Deny that SAS, Inc. has ever owned or operated any aircraft; admit that SAS at all

relevant times did and does own and operate aircraft; and deny that any aircraft owned or operated by SAS have incorporated infringing parts.

9. Answering Paragraph 31: Admit that line maintenance facilities are maintained at five cities in the United States; and deny each and every other allegation in said paragraph.

10. Answering Paragraph 32: Admit that SAS has flown more than 100,000 passengers from and to cities in the United States; and deny each and every other allegation in said paragraph.

11. Deny each and every allegation in Paragraphs 33 and 34.

12. Answering Paragraph 35: Admit that SAS received a letter, dated June 11, 1973, from Paul H. Blaustein, plaintiff's attorney; and deny each and every other allegation in said paragraph.

13. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations or any of them in Paragraph 36.

Further answering the complaint, defendants SAS and SAS, Inc. state as follows:

14. Patent 3,265,290 and each of its claims are invalid and void for the following reasons:

(A) Under 35 U.S.C. §102(b), because the alleged invention was in public use in this country more than one year prior to the date of the application for said patent; and

(B) Under 35 U.S.C. §103, because any differences between the subject matter sought to be patented and the prior art were such that the subject matter would have been obvious to a person having ordinary skill in that art.

15. Plaintiff complains of patent infringement by certain parts incorporated in aircraft engines mounted in aircraft operated by SAS between points abroad and points in the United States. Even if plaintiff's patent were held valid, SAS's use of the invention would not constitute infringement because of the provisions of 35 U.S.C. §272. SAS aircraft have entered the United States only temporarily; SAS has used aircraft engines exclusively for the needs of the aircraft; and said engines have not been sold in or used for the manufacture of anything to be sold in or exported from the United States. Denmark, Norway and Sweden afford similar privileges to aircraft of the United States.

WHEREFORE, defendants SAS and SAS, Inc. pray for judgment herein as follows:

- (A) Dismissing the Complaint with prejudice;
- (B) Adjudging Patent 3,265,290 to be invalid and not infringed by said defendants;
- (C) Awarding them the costs and disbursements of this action, as well as reasonable attorneys fees; and
- (D) For such other and further relief as to this Court may seem just and proper.

HALE RUSSELL & STENTZEL

By

Louis Haynes Kurrelmeier
A member of the firm

Attorneys for Defendants

Scandinavian Airlines System and
Scandinavian Airlines System, Inc.
122 East 42nd Street
New York, New York 10017
OXford 7-1850

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X	:	
ANTHONY J. CALI,	:	
Plaintiff	:	
v.	:	Civil Action No.
JAPAN AIRLINES CO., LTD.,	:	73 C 1596 (JFD)
and	:	
SCANDINAVIAN AIRLINES SYSTEM &	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.	:	
and	:	
KLM ROYAL DUTCH AIRLINES,	:	
Defendants	:	
----- X	:	

AMENDMENT TO DEFENDANT
JAPAN AIRLINES CO., LTD'S ANSWER

Pursuant to the Order of the Court, signed March 6, 1974, defendant Japan Airlines Co., Ltd. (hereinafter JAL) hereby amends its Answer heretofore filed in this action on January 21, 1974 by addition of the following paragraphs:

19F (a) Each accused Pratt & Whitney JT-4A engine owned by defendant JAL and operated into the United States was operated exclusively in civil aircraft which are registered in, and are aircraft of, Japan. Convention on International Civil Aviation, Art. 17, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

(b) Operation of such aircraft was exclusively in international air navigation authorized by Foreign Air Carrier Permits and amendments thereto issued to JAL pursuant to United States Civil Aeronautics Board Orders and was conducted between a point or points outside the United States and intermediate or terminal points in the United States.

(c) In conducting such operation JAL's aircraft entered the United States only temporarily.

(d) Japan and the United States are each a country of the Union for the Protection of Industrial Property in accordance with the Paris Convention For the Protection of Industrial Property, Art. 1, June 27, 1935, 53 Stat. 1748, T.S. No. 941 (1938), London 1934; Arts. 1, 25 and 27, May 4, 1970, 2 U.S.T. 1583, T.I.A.S. No. 6923 (1970), Stockholm 1967.

(e) In accordance with said treaty (article 5ter) such entrance, temporarily, of defendant's aircraft containing the accused engines into the United States does not constitute an infringement of the Cali patent in suit.

19G (a) All of the accused Pratt & Whitney JT-4A engines owned by defendant JAL and operated into the United States were installed in civil aircraft which are registered in, and are aircraft of, Japan. Convention on International Civil Aviation, Art. 17, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

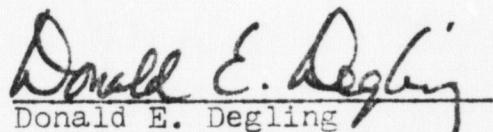
(b) Operation of such aircraft was exclusively in international air navigation authorized by the Foreign Air Carrier Permits and amendments thereto issued to JAL pursuant to United States Civil Aeronautics Board Orders and was conducted between a point or points outside the United States and intermediate or terminal points in the United States.

(c) Each of the accused engines was used exclusively for the needs of defendant's aircraft in which it was installed and was not sold or distributed internally in the United States or exported commercially from the United States.

(d) Japan and the United States are each a contracting State of the Convention on International Civil Aviation, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591, and a party to the International Convention for the Protection of Industrial Property and to amendments thereof.

(e) In accordance with said Convention on International Civil Aviation, the authorized entry of defendant's aircraft with the accused engines into or transit across the United States does not entail any claim against the owner or operator thereof or any other interference therewith on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of the Cali patent in suit. Convention on International Civil Aviation, Art. 27, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

Dated: April 1, 1974
New York, New York


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Of Counsel:
James M. Estabrook
Fish & Neave
277 Park Avenue
New York, N.Y. 10017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

ANTHONY J. CALI,	:	
Plaintiff	:	
v.	:	Civil Action No.
JAPAN AIRLINES CO., LTD.,	:	73 C 1596 (JFD)
and	:	
SCANDINAVIAN AIRLINES SYSTEM &	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.	:	
and	:	
KLM ROYAL DUTCH AIRLINES,	:	
Defendants	:	

----- X

AMENDMENT TO DEFENDANT
KLM ROYAL DUTCH AIRLINES' ANSWER

Pursuant to the Order of the Court, signed March 6, 1974, defendant KLM Royal Dutch Airlines (hereinafter KLM) hereby amends its Answer heretofore filed in this action on January 21, 1974 by addition of the following paragraphs:

56D (a) Each accused Pratt & Whitney JT-4A engine owned by defendant KLM and operated into the United States was operated exclusively in civil aircraft which were registered in, and were aircraft of the Netherlands. Convention on International Civil Aviation, Art. 17, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

(b) Operation of such aircraft was exclusively in international air navigation authorized by Foreign Air Carrier Permits and amendments thereto issued to KLM pursuant to United States Civil Aeronautics Board Orders and was conducted between a point or points outside the United States and intermediate or terminal points in the United States.

(c) In conducting such operation KLM's aircraft entered the United States only temporarily.

(d) The Netherlands and the United States are each a country of the Union for the Protection of Industrial Property in accordance with the Paris Convention For the Protection of Industrial Property, Art. 1, June 27, 1935, 53 Stat. 1748, T.S. No. 941 (1938), London 1934; Arts. 1, 25 and 27, May 4, 1970, 2 U.S.T. 1583, T.I.A.S. No. 6923 (1970), Stockholm 1967.

(e) In accordance with said treaty (article 5ter) such entrance, temporarily, of defendant's aircraft containing the accused engines into the United States did not constitute an infringement of the Cali patent in suit.

56E (a) All of the accused Pratt & Whitney JT-4A engines owned by defendant KLM and operated into the United States were installed in civil aircraft which were registered in, and were aircraft of, the Netherlands. Convention on International Civil Aviation, Art. 17, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

(b) Operation of such aircraft was exclusively in international air navigation authorized by the Foreign Air Carrier Permits and amendments thereto issued to KLM pursuant to United States Civil Aeronautics Board Orders and was conducted between a point or points outside the United States and intermediate or terminal points in the United States.

(c) Each of the accused engines was used exclusively for the needs of defendant's aircraft in which it was installed and was not sold or distributed

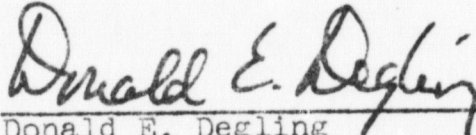
internally in the United States or exported commercially from the United States.

(d) The Netherlands and the United States are each a contracting State of the Convention on International Civil Aviation, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591, and a party to the International Convention for the Protection of Industrial Property and to amendments thereof.

(e) In accordance with said Convention on International Civil Aviation, the authorized entry of defendant's aircraft with the accused engines into or transit across the United States did not entail any claim against the owner or operator thereof or any other interference therewith on the ground that the construction, mechanism, parts, accessories or operation of the aircraft was an infringement of the Calil patent in suit. Convention on International Civil Aviation, Art. 27, August 6, 1946, 61 Stat. 1180, T.I.A.S. No. 1591.

Dated: April 1, 1974
New York, New York

Of Counsel:
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Donald E. Degling
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New York, N.Y. 10017
(212) 826-1050

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY J. CALI,

:

Plaintiff, :

v. :

Civil Action No.

JAPAN AIRLINES CO., LTD., :

73 C 1596 (JFD)

and

SCANDINAVIAN AIRLINES SYSTEM & :

SCANDINAVIAN AIRLINES SYSTEM, INC., :

and

KLM ROYAL DUTCH AIRLINES, :

Defendants. :

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AMENDMENT TO ANSWER OF DEFENDANTS
SCANDINAVIAN AIRLINES SYSTEM AND
SCANDINAVIAN AIRLINES SYSTEM, INC.

Pursuant to the Order of this Court, signed March 6, 1974, defendants Scandinavian Airlines System and Scandinavian Airlines System, Inc. hereby amend their Answer heretofore filed herein by adding the following paragraphs:

16. Plaintiff complains of patent infringement by certain parts incorporated in aircraft engines mounted in aircraft operated by SAS between points abroad and points in the United States. Said aircraft were at all relevant times aircraft of either Denmark or Norway or Sweden. The United States, Denmark, Norway and Sweden at all relevant times were and are parties to the Convention on International Civil Aviation (61 Stat. 1212). The accused engines were at all relevant times either mechanism or parts of, or spare parts or equipment for, aircraft of Denmark or Norway or Sweden engaged in international air navigation authorized by the United States, and pursuant to Article 27 of said Convention were exempt from claims of infringement.

17. Plaintiff complains of patent infringement by certain parts incorporated in aircraft engines mounted in aircraft operated by SAS between points abroad and points in the United States. Said aircraft were at all relevant times aircraft of either Denmark or Norway or Sweden. The United States at all relevant times was and is bound to Denmark, Norway and Sweden by the Paris Convention for the Protection of Industrial Property of 1883, as revised at London (1938), Lisbon (1958), or Stockholm (1967). The accused engines were at all relevant times either devices used in the operation, or accessories, of aircraft temporarily entering the United States, and pursuant to paragraph 2 of Article 5^{ter} of said Convention may not be considered as infringements of plaintiff's rights.

HALE RUSSELL & STENTZEL

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A member of the firm
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X	
ANTHONY J. CALI,	:
Plaintiff	:
v.	:
JAPAN AIRLINES CO., LTD.,	: Civil Action No.
and	:
SCANDINAVIAN AIRLINES SYSTEM &	: 73 C 1596 (JFD)
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:
and	:
KLM ROYAL DUTCH AIRLINES,	:
Defendants	:
----- X	

DEFENDANT'S, JAPAN AIRLINES CO., LTD.
ANSWERS TO PLAINTIFF'S FIRST INTERRO-
GATORIES TO EACH DEFENDANT: (1) JAL,
(2) SAS INC. AND SAS, AND (3) KLM

Comes now defendant, Japan Airlines Co., Ltd. (JAL) and in response to "Plaintiff's First Interrogatories to Each Defendant: (1) JAL, (2) SAS INC. and SAS, and (3) KLM" served on October 29, 1973, states the following as its answers to said interrogatories, which answers are true and complete to the best of its knowledge and belief, without prejudice to such changes therein or additions thereto as may be necessary should it later appear that any answer given herein is erroneous or incomplete in any respect:

INTERROGATORY 1

"With respect to the patent in suit, No. 3,265,290, does defendant claim there is any difference between the JT-4 engines or compressor thereof now or ever used by defendant and the JT-4 engine or compressor thereof described by each of claims 1, 2, 3, 4 and 5 of said patent, and if the answer is yes, state the difference or differences."

ANSWER TO INTERROGATORY 1

Yes. None of the claims of the Cali patent in suit describe a JT-4A engine. Claims 1 through 4 of the patent in suit purport to describe only the low pressure compressor section of a jet engine while claim 5 purports to describe only a combined stator and fairing section for a low pressure compressor for such a jet engine. As heretofore admitted by plaintiff, Cali, Figure 1 of the Cali patent 3,265,290 illustrates a conventional prior art JT-4A jet engine low pressure compressor to which Cali contributed only the welds 76 between the 7th stage vane and shroud and the adjacent outlet fairing.

INTERROGATORY 2

"Are there any other jet engines now or ever used by defendant besides the JT-4, which includes a compressor stage having a fairing (or pass-out fairing), an adjacent stator, and in which the front edge of said fairing is connected by weld or tie bolts to the rear edge portion of the adjacent stator, and if the answer is yes, identify such engines, and the manufacturer thereof."

ANSWER TO INTERROGATORY 2

No.

INTERROGATORIES 3a, 3b, 3c and 3d

"a) Identify by serial number each JT-4 engine purchased by defendant, either alone or as part of an aircraft."

"b) State when each such engine was received."

"c) State when each such engine was first used."

"d) State on what aircraft, by type, such JT-4 engines have been used by defendant."

ANSWER TO INTERROGATORIES 3a, 3b, 3c and 3d

All the JT-4A engines listed below were used on Douglas DC-8-32 or DC-8-33 aircraft:

<u>Engine Serial Number</u>	<u>Date Engine Acquired</u>	<u>Date Engine First Used</u>
611007	January 19, 1960	September 16, 1960
611221	March 30, 1960	September 2, 1960
611222	March 30, 1960	September 9, 1960
611311	July 31, 1960	July 31, 1960
611333	July 22, 1960	July 22, 1960
611334	July 22, 1960	July 22, 1960
611335	July 22, 1960	July 22, 1960
611362	July 22, 1960	July 22, 1960
611365	July 31, 1960	July 31, 1960
611366	July 31, 1960	July 31, 1960
611377	July 31, 1960	July 31, 1960
611424	May 2, 1960	June 12, 1961
611453	May 2, 1960	October 25, 1960
611504	September 25, 1960	September 25, 1960
611508	September 25, 1960	September 25, 1960
611546	September 25, 1960	September 25, 1960
611549	September 25, 1960	September 25, 1960
611623	December 22, 1964	January 4, 1965
611666	August 2, 1960	September 23, 1960
611667	August 10, 1960	October 2, 1960
611670	September 30, 1960	November 8, 1960
611674	August 11, 1960	October 18, 1960
611684	December 8, 1960	December 8, 1960
611711	December 8, 1960	December 8, 1960
611722	May 7, 1961	May 7, 1961
611725	September 13, 1960	November 10, 1960
611729	September 13, 1960	January 27, 1961
611734	December 8, 1960	December 8, 1960
611768	December 8, 1960	December 8, 1960
611782	October 15, 1960	August 10, 1962
611810	March 9, 1961	May 2, 1961
611845	May 7, 1961	May 7, 1961

<u>Engine Serial Number</u>	<u>Date Engine Acquired</u>	<u>Date Engine First Used</u>
611882	May 7, 1961	May 7, 1961
611883	May 7, 1961	May 7, 1961
611931	May 15, 1961	July 28, 1961

INTERROGATORY 3e

"State whether any of the engines identified in answer to "a" had the fairing (or pass-out fairing) rigidly connected to the adjacent stator at the time of first use, and if the answer is yes, identify such engine."

ANSWER TO INTERROGATORY 3e

Assuming that the words "fairing ... rigidly connected to the adjacent stator" as used in the interrogatory mean connected by a weld, the answer is "yes". Engine Serial No. 611623 acquired by JAL from Pan American Airways in December 1964 incorporated a 7th stage vane and shroud welded to the outlet fairing at the time the engine was received by JAL. Upon information and belief, the weld was performed at a time prior to December 1964 by Pan American Airways pursuant to its shopright under the Cali patent in suit.

INTERROGATORY 3e(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3e(1)

Mr. K. Watanabe, Power Plant Engineering Division; JAL records including (1) engine modification accomplishment list, and (2) engine history for JT-4A.

INTERROGATORY 3f

"State whether any of the engines identified in "a" above, ever developed a problem involving wear or rubbing between the fairing and the adjacent stator, and if the answer is yes, identify such engines, and when such problem was first identified or recognized."

ANSWER TO INTERROGATORY 3f

Assuming that the word "problem" as used in the interrogatory means simply the recognition of an existing condition, the answer is "yes". There was a tendency of wear between the fairing and the adjacent stator in the JT-4A engines. However, a review of the JAL records has shown neither a report of this condition nor any engine removal due to such wear.

INTERROGATORY 3f(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3f(1)

Mr. K. Watanabe; JAL engine overhaul records.

INTERROGATORY 3g

"State whether any of the engines identified in "a" above, ever developed a problem involving the rotor blades touching or rubbing against the fairing, and if the answer is yes, identify such engine and when such problem was first identified or recognized."

ANSWER TO INTERROGATORY 3g

Assuming that the word "problem" as used in the interrogatory means simply the recognition of an existing condition, the answer is "yes". There was a tendency of the rotor blades to touch or rub against the fairing. However, a review of the JAL records has revealed no report of this "problem" nor any engine removal due to a rotor blade touching or rubbing against the fairing.

INTERROGATORY 3g(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3g(1)

Mr. K. Watanabe; JAL engine overhaul records.

INTERROGATORY 3h

"State whether any of the engines identified in "a" above ever developed any problem of parts thereof having cracks in the stator, rotor or fairing and state whether such were traceable to the wear between the fairing and the adjacent stator or rotor."

ANSWER TO INTERROGATORY 3h

A review of the JAL records has revealed no report indicating the existence of cracks in the stator, rotor or fairing traceable to wear between the fairing and the adjacent stator or rotor.

INTERROGATORY 3h(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3h(1)

Mr. K. Watanabe; JAL engine overhaul records.

INTERROGATORY 3i

"State whether defendant ever reported the existence of the problems identified in 3f, 3g, or 3h above to the manufacturer of JT-4 engines, and if the answer is yes, identify all documents relating to any and every one of such reports, and the person and persons having the responsibility for making such reports, and identify all replies."

ANSWER TO INTERROGATORY 3i

JAL has never reported the existence of the "problems" identified in interrogatories 3f, 3g, or 3h to the manufacturer of the JT-4A engines.

INTERROGATORY 3J

"State whether defendant ever used tie-rods or bolts to secure the fairing and adjacent stator, and if the answer is yes, identify such engines and when such tie-rods or bolts were first installed."

ANSWER TO INTERROGATORY 3J

Yes. Tie rods were installed pursuant to Pratt & Whitney Service Bulletin No. 1040 using parts procured from Pratt & Whitney as set forth in the following table:

<u>Engine Serial Number</u>	<u>Date Tie Rods Installed</u>
611007	August 12, 1967
611221	August 26, 1967
611333	July 10, 1968
611334	February 13, 1968
611335	Unknown
611362	May 16, 1967
611365	April 14, 1968
611366	October 29, 1967
611377	September 2, 1968
611424	July 2, 1967
611453	January 17, 1967
611504	November 16, 1968
611508	February 7, 1967
611623	May 15, 1969
611667	March 15, 1967
611670	June 18, 1967
611684	April 27, 1967
611711	December 12, 1967
611729	October 19, 1967
611734	April 8, 1969
611782	May 27, 1967
611931	Prior to April 9, 1972

INTERROGATORY 3j(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3j(1)

Mr. K. Watanabe; Pratt & Whitney Service Bulletin No. 1040; change order authorization 72-308 (January 4, 1966); JT-4A modification accomplishment list; engine history for JT-4A.

INTERROGATORY 3k

"State whether defendant ever used welding to secure the fairing and adjacent stator, and if the answer is yes, identify such engines and when such welding was first used."

ANSWER TO INTERROGATORY 3k

No.

INTERROGATORY 3k(1)

"Identify the person or persons, and all documents used to formulate the answer to the next above interrogatory."

ANSWER TO INTERROGATORY 3k(1)

Mr. K. Watanabe; no documents.

INTERROGATORY 3l

"Identify any other techniques or suggestions, other than that of 3j or 3k, which defendant tried in connection with any of the problems of 3g, 3h, or 3i."

ANSWER TO INTERROGATORY 3l

JAL has restored the 7th stage vane and shroud and the outlet fairing to the original dimensions by building up the separate parts with weld material and then machining the parts back to the original dimensions as specified in the JT-4 overhaul manual issued by Pratt & Whitney, the engine manufacturer.

INTERROGATORY 11

"Identify all routes to or from any United States territory which are flown by defendant from 1963 to the present time."

ANSWER TO INTERROGATORY 11

Pursuant to Order E13776 served April 24, 1959, the U.S. Civil Aeronautics Board issued a Foreign Air Carrier Permit authorizing JAL to engage in foreign air transportation of persons, property and mail over the following routes:

Route 1. Between a point or points in Japan, the intermediate points Wake Island, and Honolulu, Territory of Hawaii, and (a) beyond Honolulu, the terminal point San Francisco, California, and (b) beyond Honolulu, the terminal point Los Angeles, California;

Route 2. Between a point or points in Japan and the terminal point Seattle, Washington;

Route 3. Between a point or points in Japan, the intermediate point Naha, Okinawa, and the terminal point Hong Kong.

Subsequently Route 3 was amended by Order E-21746 served February 2, 1965 to include the intermediate point Taipei, Taiwan.

By Order E-24295 served October 19, 1966, JAL's Foreign Air Carrier Permit was amended in the following respects:

1. Route 1 was amended so as to authorize service between a point or points in Japan, the intermediate points Honolulu, Hawaii; San Francisco, California; New York, New York and beyond New York to intermediate points in Europe and Asia with a terminal point or points in Japan.

2. Route 2 which originally authorized services to Seattle, Washington was deleted and in lieu thereof JAL was authorized to provide services between a point or points in Japan and the intermediate point Honolulu, Hawaii, terminal point Los Angeles, California. This route had previously been set forth in Route 1 (b) and merely reflected a redrafting of the permit and did not grant any new additional authority.

3. Route 3 was amended by changing Hong Kong from a terminal point to an intermediate point and adding the new terminal point in the Philippine Islands.

Pursuant to Order 70-8-66 served August 19, 1970, JAL's Foreign Air Carrier Permit was amended by adding two new additional routes in addition to the existing three routes. The new routes were:

Route 4. Between a point or points in Japan, the intermediate point Anchorage, Alaska and the terminal point New York, New York.

Route 5. Between a point or points in Japan, the intermediate point Saipan, Saipan Island and the terminal point Guam, Guam Island.

INTERROGATORY 12

"Identify each such route for which permission has been given by CAB or any other appropriate authority and identify the nature of such permission and the documents which identify such permission. Please attach a copy of such document to the answer to these interrogatories."

ANSWER TO INTERROGATORY 12

See the answer to interrogatory 11.

Foreign Air Carrier Permits were issued to JAL as follows:

1. Amended permit pursuant to CAB Order No. E-12945 approved by the President on September 6, 1958.
2. Permit pursuant to CAB Order No. E-13776 approved by the President on April 22, 1959.
3. Amended permit pursuant to CAB Order No. E-21746 approved by the President on February 1, 1965.
4. Amended permit pursuant to CAB Order No. E-24295 approved by the President on October 14, 1966.
5. Amended permit pursuant to CAB Order No. 70-8-66 approved by the President on August 14, 1970.

INTERROGATORY 13

"Identify all airline facilities, maintenance, and sales facilities in the United States which are owned by defendant."

ANSWER TO INTERROGATORY 13

None.

INTERROGATORY 14

"Identify all other maintenance and sales facilities which are not owned but are leased and specify the substance of the significant terms of such lease."

ANSWER TO INTERROGATORY 14

JAL has leased airport and/or ground support and administrative facilities at the following locations within the United States, its territories or possessions:

1. Honolulu, Hawaii
2. Guam, Guam Island
3. San Francisco, California
4. Los Angeles, California
5. New York, New York
6. Anchorage, Alaska
7. Moses Lake, Washington
8. Seattle, Washington
9. Denver, Colorado

10. San Jose, California
11. Portland, Oregon
12. San Diego, California
13. Phoenix, Arizona
14. Dallas, Texas
15. Houston, Texas
16. Chicago, Illinois
17. Detroit, Michigan
18. Cleveland, Ohio
19. St. Louis, Missouri
20. Indianapolis, Indiana
21. Cincinnati, Ohio
22. Minneapolis, Minnesota
23. Washington, D.C.
24. Miami, Florida
25. Atlanta, Georgia

The above facilities include administrative offices, ticket counters, lounges, vehicle parking areas, baggage handling and storage areas, and storage areas for tools, equipment and supplies. These facilities are variously leased from state, city or county governments or in some cases from independent agencies, private corporations, or individuals. JAL has no facilities (either owned or leased) within the United States or its possessions for performing major maintenance or overhauls of its aircraft engines or any maintenance necessitating the disassembly of the compressor portion of the engine.

INTERROGATORY 15

"Does defendant contend that it has plans of a continuing and permanent nature to conduct business as a commercial airline in and to the United States."

ANSWER TO INTERROGATORY 15

Defendant JAL has no present plans to discontinue any portion of its business in the foreign air transportation of persons, property and mail between a point or points in Japan and various specified points in the United States as presently authorized by its Foreign Air Carrier Permits.

INTERROGATORY 16

"Identify the number of passengers flown in each of the two preceding years from outside the United States to or from any city in the United States."

ANSWER TO INTERROGATORY 16

In 1972 JAL transported over 350,000 passengers from points outside the United States to points within the United States and transported over 390,000 passengers from points within the United States to points outside the United States. In 1971 JAL transported over 230,000 passengers from points outside the United States to points within the United States and transported over 260,000 passengers from points within the United States to points outside the United States. A minor number of these passengers were carried on DC-8 aircraft equipped with JT-4A engines.

INTERROGATORY 17

"State the amount of New York State and other state taxes or United States taxes paid in each year from 1963 to the present time."

ANSWER TO INTERROGATORY 17

JAL does not maintain separate records for the various taxes paid by it in each jurisdiction where it leases properties or carries on business activities. JAL pays sales taxes, use taxes, income taxes, real property taxes, personal property taxes and various payroll taxes in a number of states and pays franchise taxes in California. JAL has paid no federal taxes based solely upon its use of aircraft or aircraft engines.

INTERROGATORIES 18a and 18b

"Identify each facility in the United States where defendant conducts maintenance work of any sort of any of its airplanes."

"Identify any such facility of 18(a) where maintenance work of any form relating to the JT-4 was perfected."

ANSWER TO INTERROGATORIES 18a and 18b

None; JAL only services its engines and aircraft in the United States; all maintenance is done in Japan. See the answer to interrogatory 14.

INTERROGATORY 19

"Identify any facility in the United States where defendant has hangars or other means for allowing its planes to remain on land for one or more nights."

ANSWER TO INTERROGATORY 19

None. However, each airport facility in the United States used by defendant JAL has space where aircraft may be parked pending the scheduled departure of the aircraft.

INTERROGATORY 20

"Identify each route and the cities thereof and the time that defendant has flown such route with respect to the engines identified in interrogatory 3(a)."

ANSWER TO INTERROGATORY 20

Defendant JAL has flown aircraft equipped with JT-4A engines on routes having initial, intermediate or terminal points in the United States, its territories or possessions as follows:

1960

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Seattle

1961

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Seattle
4. Tokyo - Anchorage - Copenhagen - London - Paris

1962

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu
4. Tokyo - Anchorage - Copenhagen - London - Paris

1963

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu
4. Tokyo - Anchorage - Copenhagen - London - Paris

1964

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu
4. Tokyo - Anchorage - Copenhagen - London - Paris

1965

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Anchorage - Copenhagen - Paris
4. Tokyo - Anchorage - Hamburg - London

1966

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu - San Francisco - New York City - London
4. Tokyo - Anchorage - Hamburg - London
 or
 London - Paris
 or
 Copenhagen - Amsterdam
 or
 London - Paris - (Hamburg)

1967

1. Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu - San Francisco - New York C.
4. Tokyo - Honolulu
5. Tokyo - Anchorage - Copenhagen - Amsterdam
 or
 Hamburg - London
 or
 Hamburg - Paris
 or
 London - Paris

1968

1. Osaka - Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - San Francisco
3. Tokyo - Honolulu - Los Angeles
4. Tokyo - Honolulu - San Francisco - New York City - London
or
Paris
5. Tokyo - Honolulu
6. Tokyo - Vancouver - San Francisco
7. Tokyo - Anchorage - Copenhagen - Amsterdam
or
Hamburg - London
or
Hamburg - Paris
or
London - Paris

1969

1. Osaka - Tokyo - Honolulu - San Francisco
2. Tokyo - Honolulu - Los Angeles
3. Tokyo - Honolulu
4. Tokyo - Anchorage - Vancouver - San Francisco
5. Tokyo - Anchorage - Copenhagen - Amsterdam
or
Hamburg - Frankfurt
or
Hamburg - Paris
or
Copenhagen - Paris
or
London - Paris
6. Tokyo - Hong Kong - Bangkok - Calcutta - Karachi - Cairo
or
New Delhi - Teheran - Beirut
- Rome - Paris - London
or
Frankfurt - Paris
- New York City

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

- .. Rome - Paris - London
or
Frankfurt - Paris
- New York City

1. The first step in the process of identifying a problem is to recognize that a problem exists. This is often done by comparing current performance with a desired state or goal. If there is a significant difference, a problem is identified.

- Hamburg - Frankfurt
or
Hamburg - Paris
or
London - Paris
or
Copenhagen - Paris
or

London
or
Paris

4. Tokyo - Hong Kong - Bangkok - Calcutta - Karachi - Cairo
or
New Delhi - Teheran - Beirut
- Rome - Frankfurt
or
Paris
- London - New York City
5. Tokyo - Guam
6. Tokyo - Osaka - Guam

1972

1. Tokyo - Hong Kong - Bangkok - Calcutta - Karachi - Cairo
or
New Delhi - Teheran - Beirut
or
Bombay - Teheran - Beirut
- Rome - Frankfurt - Paris
or
Frankfurt - London
- New York City - San Francisco
2. Tokyo - Osaka - Guam

1973

1. Tokyo - Osaka - Guam
2. Tokyo - Anchorage - San Francisco - New York City
3. Tokyo - Anchorage - San Francisco
4. Tokyo - Anchorage - New York City
5. Tokyo - Anchorage - Los Angeles

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY J. CALI,

Plaintiff

v.

JAPAN AIRLINES CO., LTD.,
and

SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and

KLM ROYAL DUTCH AIRLINES,

Defendants
----- X

Civil Action No.

73 C 1596 (JFD)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Kiichi Ito , being duly sworn, deposes and says
that he is Vice President, The Americas, Japan Airlines Co., Ltd.,
and is the agent of that corporation for the purpose of answering
"Plaintiff's First Interrogatories to Each Defendant: (1) JAL,
(2) SAS INC. and SAS, and (3) KLM" served on October 29, 1973
and for making this verification;

That he has read the foregoing answers to said inter-
rogatories; and

That said answers are true according to his best
knowledge and belief based upon investigations made by cognizant
personnel of defendant, but the truth of some of the statements
included in said answers is not known to him personally.

Kiichi Ito

Kiichi Ito

Subscribed and sworn to before
me this 18th day of January, 1974.

Donald E. Wegling

Notary Public

RONALD E. WEGLING

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X	
ANTHONY J. CALI,	:
Plaintiff	:
v.	:
	Civil Action No.
JAPAN AIRLINES CO., LTD.,	:
and	73 C 1596 (JFD)
SCANDINAVIAN AIRLINES SYSTEM &	:
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:
and	:
KLM ROYAL DUTCH AIRLINES,	:
Defendants	:
----- X	

DEFENDANT'S, KLM ROYAL DUTCH AIRLINES
ANSWERS TO PLAINTIFF'S FIRST INTERRO-
GATORIES TO EACH DEFENDANT: (1) JAL,
(2) SAS INC. AND SAS, AND (3) KLM

Comes now defendant, KLM Royal Dutch Airlines (KLM) and in response to "Plaintiff's First Interrogatories to Each Defendant: (1) JAL, (2) SAS INC. and SAS, and (3) KLM" served on October 29, 1973, states the following as its answers to said interrogatories, which answers are true and complete to the best of its knowledge and belief, without prejudice to such changes therein or additions thereto as may be necessary should it later appear that any answer given herein is erroneous or incomplete in any respect:

INTERROGATORY 1

"With respect to the patent in suit, No. 3,265,290, does defendant claim there is any difference between the JT-4 engines or compressor thereof now or ever used by defendant and the JT-4 engine or compressor thereof described by each of claims 1, 2, 3, 4 and 5 of said patent, and if the answer is yes, state the difference or differences."

ANSWER TO INTERROGATORY 1

Yes. None of the claims of the Cali patent in suit describe a JT-4A engine. Claims 1 through 4 of the patent in suit purport to describe only the low pressure compressor section of a jet engine while claim 5 purports to describe only a combined stator and fairing section for a low pressure compressor for such a jet engine. As heretofore admitted by plaintiff, Cali, Figure 1 of the Cali patent 3,265,290 illustrates a conventional prior art JT-4A jet engine low pressure compressor to which Cali contributed only the welds 76 between the 7th stage vane and shroud and the adjacent outlet fairing.

INTERROGATORY 2

"Are there any other jet engines now or ever used by defendant besides the JT-4, which includes a compressor stage having a fairing (or pass-out fairing), an adjacent stator, and in which the front edge of said fairing is connected by weld or tie bolts to the rear edge portion of the adjacent stator, and if the answer is yes, identify such engines, and the manufacturer thereof."

ANSWER TO INTERROGATORY 2

No.

INTERROGATORIES 3a, 3b, 3c and 3d

"a) Identify by serial number each JT-4 engine purchased by defendant, either alone or as part of an aircraft."

"b) State when each such engine was received."

"c) State when each such engine was first used."

"d) State on what aircraft, by type, such JT-4 engines have been used by defendant."

ANSWER TO INTERROGATORIES 3a, 3b, 3c and 3d

All the JT-4A engines listed below were used on Douglas DC-8 aircraft:

<u>Engine Serial Number</u>	<u>Date Engine Acquired</u>	<u>Date Engine First Used</u>
610656	September 11, 1959	August 23, 1960
610772	March 25, 1960	After March 25, 1960
610793	March 25, 1960	After March 25, 1960
610794	March 25, 1960	After March 25, 1960
610795	August 21, 1960	After August 21, 1960
610796	March 25, 1960	After March 25, 1960
610882	April 20, 1960	After April 20, 1960
610884	May 10, 1960	After May 10, 1960
610891	April 20, 1960	After April 20, 1960
610892	April 20, 1960	After April 20, 1960
610979	May 10, 1960	After May 10, 1960
610980	May 10, 1960	After May 10, 1960
611006	April 20, 1960	After April 20, 1960
611090	February 15, 1960	March 31, 1961
611091	February 29, 1960	April 22, 1960
611094	February 29, 1960	May 19, 1960
611142	February 15, 1960	May 25, 1960
611282	March 30, 1960	May 13, 1960
611284	March 30, 1960	May 3, 1960
611308	May 10, 1960	After May 10, 1960
611309	July 6, 1960	After July 6, 1960
611313	July 6, 1960	After July 6, 1960
611315	July 6, 1960	After July 6, 1960
611415	April 24, 1960	June 4, 1960
611416	April 22, 1960	May 21, 1960
611418	April 22, 1960	June 17, 1960
611420	April 22, 1960	June 19, 1960
611488	August 21, 1960	After August 21, 1960
611490	July 6, 1960	After July 6, 1960
611491	August 21, 1960	After August 21, 1960

<u>Engine Serial Number</u>	<u>Date Engine Acquired</u>	<u>Date Engine First Used</u>
611513	September 26, 1960	After September 26, 1960
611543	June 3, 1960	June 29, 1960
611547	June 3, 1960	June 23, 1960
611576	September 26, 1960	After September 26, 1960
611577	September 26, 1960	After September 26, 1960
611583	June 17, 1960	July 25, 1960
611584	September 26, 1960	After September 26, 1960
611588	June 17, 1960	August 8, 1960
611589	June 17, 1960	August 19, 1960
611590	August 21, 1960	After August 21, 1960
611596	October 29, 1960	After October 29, 1960
611662	October 29, 1960	After October 29, 1960
611671	October 29, 1960	After October 29, 1960
611681	October 29, 1960	After October 29, 1960
611691	September 7, 1960	July 15, 1961
611692	September 7, 1960	June 28, 1961
611798	November 22, 1960	October 31, 1961
611799	November 22, 1960	January 3, 1961

INTERROGATORY 3e

"State whether any of the engines identified in answer to "a" had the fairing (or pass-out fairing) rigidly connected to the adjacent stator at the time of first use, and if the answer is yes, identify such engine."

ANSWER TO INTERROGATORY 3e

Assuming that the words "fairing ... rigidly connected to the adjacent stator" as used in the interrogatory mean connected by a weld, the answer is "no".

INTERROGATORY 11

"Identify all routes to or from any United States territory which are flown by defendant from 1963 to the present time."

ANSWER TO INTERROGATORY 11

The routes to and from the United States over which KLM has operated scheduled services from 1963 to the present are:

- 1) Amsterdam/New York. Until March 1970, intermediate stops were made on some flights at Prestwick, Scotland, Shannon, Ireland, and/or Gander, Newfoundland.
- 2) Amsterdam/Houston, via Montreal. Until March 1970, intermediate stops were made on some flights at Prestwick, Shannon and/or Gander.
- 3) Amsterdam/Chicago, since March 1970.
- 4) Amsterdam/Anchorage/Tokyo, since January 1965.
- 5) Curacao/Aruba/New York. Aruba has not been served on all flights.
- 6) Curacao/Aruba/Miami, until March 1970. Intermediate stops were made on some flights at Port-au-Prince, Haiti, and/or Kingston, Jamaica.
- 7) St. Maarten/New York, since May 1973.

INTERROGATORY 12

"Identify each such route for which permission has been given by CAB or any other appropriate authority and identify the nature of such permission and the documents which identify such permission. Please attach a copy of such document to the answer to these interrogatories."

ANSWER TO INTERROGATORY 12

Foreign Air Carrier Permits have been issued to KLM by the CAB and approved by the President as follows:

1. Permit issued pursuant to CAB Order No. E-11729 approved on August 23, 1957.
2. Permit issued pursuant to CAB Order No. E-12945 approved on September 6, 1958.
3. Permit issued pursuant to CAB Order No. E-21720 approved on January 25, 1965.
4. Permit issued pursuant to CAB Order No. E-26740 approved on April 30, 1968.
5. Permit issued pursuant to CAB Order No. 70-3-143 approved on March 26, 1970.

KLM has been authorized to engage in foreign air transportation of persons, property and mail on routes as set forth in the Foreign Air Carrier Permits referred to above.

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INTERROGATORY 13

"Identify all airline facilities, maintenance, and sales facilities in the United States which are owned by defendant."

ANSWER TO INTERROGATORY 13

None.

INTERROGATORY 14

"Identify all other maintenance and sales facilities which are not owned but are leased and specify the substance of the significant terms of such lease."

ANSWER TO INTERROGATORY 14

KLM has leased airport and/or ground support and administrative and sales facilities at the following locations within the United States, its territories or possessions:

1. Capt. Cook Hotel, Anchorage, Alaska
2. West Century Boulevard, Los Angeles, California
3. Los Angeles Airport, Los Angeles, California
4. Post Street, San Francisco, California
5. Guaranty Bank Building, Denver, Colorado
6. Connecticut Avenue, N.W., Washington, D.C.
7. East Sunrise Boulevard, International Building
Fort Lauderdale, Florida
8. Peachtree Road, N.W., Atlanta, Georgia
9. South Wabash Avenue, Chicago, Illinois
10. O'Hare Airport, Chicago, Illinois
11. North Tacoma, Indianapolis, Indiana
12. Common Street, New Orleans, Louisiana
13. Boylston Street, Boston, Massachusetts
14. Southfield Road, Lathrup Village, Michigan
15. Metro Drive, Bloomington, Minnesota

16. St. Francois Street, Florissant, Missouri
17. Stuyvesant Avenue, Union, New Jersey
18. Court Street, Buffalo, New York
19. Fifth Avenue, New York, New York
20. Cargo Terminal Building 87 Kennedy Airport,
New York, New York
21. Passenger Terminal, Kennedy Airport, New York,
New York
22. Arrival Building No. 50, Kennedy Airport,
New York, New York
23. Customs Building No. 80, Kennedy Airport,
New York, New York
24. Hannah Building, Cleveland, Ohio
25. South Yale, Tulsa, Oklahoma
26. Six Penn Center Plaza, Philadelphia, Pennsylvania
27. Stemmons, Freeway, Dallas, Texas
28. Allan Center, Houston, Texas
29. International Airport, Houston, Texas
30. White Henry Stuart Building, Seattle, Washington
31. West Michigan Street, Milwaukee, Wisconsin

The above facilities include sales offices, ticket counters, lounges, vehicle parking areas, baggage handling and storage areas, and storage areas for tools, equipment and supplies. These facilities are variously leased from state, city or county governments or in some cases from independent agencies, private corporations, or individuals. KLM has no facilities (either owned or leased) within the United States or its possessions for performing major maintenance or overhauls of its aircraft engines or any maintenance necessitating the disassembly of the compressor portion of the engine.

INTERROGATORY 15

"Does defendant contend that it has plans of a continuing and permanent nature to conduct business as a commercial airline in and to the United States."

ANSWER TO INTERROGATORY 15

Defendant KLM has no present plans to discontinue any portion of its business in the foreign air transportation of persons, property and mail in and to the United States as presently authorized by its Foreign Air Carrier Permits.

INTERROGATORY 16

"Identify the number of passengers flown in each of the two preceding years from outside the United States to or from any city in the United States."

ANSWER TO INTERROGATORY 16

In the fiscal year ending March 1973 KLM transported a total of over 490,000 passengers from points outside the United States to points within the United States and from points within the United States to points outside the United States. In the fiscal year ending March 1972 KLM transported a total of over 440,000 passengers from points outside the United States to points within the United States and from points within the United States to points outside the United States. A minor number of these passengers were carried on DC-8 aircraft equipped with JT-4A engines.

INTERROGATORY 17

"State the amount of New York State and other state taxes or United States taxes paid in each year from 1963 to the present time."

ANSWER TO INTERROGATORY 17

KLM does not maintain separate records for the various taxes paid by it in each jurisdiction where it leases properties or carries on business activities. KLM pays sales taxes, use taxes, personal property taxes and various payroll taxes in about 35 states and pays franchise taxes in New York. KLM pays no federal taxes based solely upon its use of aircraft or aircraft engines.

INTERROGATORIES 18a and 18b

"a) Identify each facility in the United States where defendant conducts maintenance work of any sort of any of its airplanes."

"b) Identify any such facility of 18(a) where maintenance work of any form relating to the JT-4 was perfected."

ANSWER TO INTERROGATORIES 18a and 18b

None; KLM only services its engines and aircraft in the United States; all maintenance is done in The Netherlands. See the answer to interrogatory 14.

INTERROGATORY 19

"Identify any facility in the United States where defendant has hangars or other means for allowing its planes to remain on land for one or more nights."

ANSWER TO INTERROGATORY 19

None. However, each airport facility in the United States used by defendant KLM has temporary ramp parking where aircraft may be parked pending the scheduled departure of the aircraft.

INTERROGATORY 20

"Identify each route and the cities thereof and the time that defendant has flown such route with respect to the engines identified in interrogatory 3(a)."

ANSWER TO INTERROGATORY 20

Defendant KLM has flown aircraft equipped with JT-4A engines on routes having initial, intermediate or terminal points in the United States as set forth in the answer to interrogatory 11. In 1963 scheduled services on transatlantic routes were operated largely with DC-8-50 series aircraft not equipped with JT-4A engines. KLM's seven (7) DC-8-33 aircraft equipped with the JT-4A engines were used on a gradually decreasing number of transatlantic flights as DC-8-50 series aircraft were obtained and put into flight service. Both of these aircraft were progressively replaced by the DC-8-63 commencing in 1967 and the B-747 commencing in 1971, neither of which was equipped with the JT-4A engine and, beginning in 1967, KLM sold its DC-8-33 aircraft. With respect to the Antilles routes, the DC-8-33 aircraft were introduced at a later date and continued in scheduled service longer. Scheduled DC-8-33 service terminated in November 1972 while chartered service with DC-8-33 aircraft terminated in March 1973.

INTERROGATORY 21

"With respect to the engines identified in interrogatory 3(a), state whether the defendant has ever allowed any other airline to use such engines, to borrow such engines or has sold engines and if so, identify the name of such other airline, the nature of the transaction, the dates of such transaction and the document allowing such other airline to operate such engine."

ANSWER TO INTERROGATORY 21

See the answer to interrogatory 10.

INTERROGATORY 22

"Has defendant ever transferred or traded or received JT-4 engines from any other airlines in the United States. If the answer is yes, identify such other airline, the dates of such transaction, the nature of such transaction and the documents which describe such transaction."

ANSWER TO INTERROGATORY 22

Yes. See the answer to interrogatory 10.

INTERROGATORY 23a

"Will defendant produce copies of some or all of the documents identified in response to the above interrogatories without subpoena or court order?"

ANSWER TO INTERROGATORY 23a

Yes.

INTERROGATORY 23b

"If the answer is yes, please attach copies of such documents to the answers to these interrogatories."

ANSWER TO INTERROGATORY 23b

Copies of certain of the documents identified herein and not previously made available to plaintiff during the course of other litigation will be produced for inspection and copying at the offices of defendant's attorney on January 16, 1974.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY J. CALI,

Plaintiff

v.

JAPAN AIRLINES CO., LTD.,

and

SCANDINAVIAN AIRLINES SYSTEM &

SCANDINAVIAN AIRLINES SYSTEM, INC.,

and

KLM ROYAL DUTCH AIRLINES,

Defendants

Civil Action No.

73 C 1596 (JFD)

AFFIDAVIT

----- X

STATE OF NEW YORK)

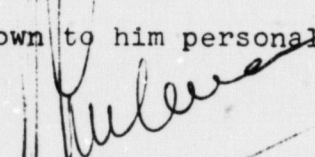
) ss.:

COUNTY OF NEW YORK)

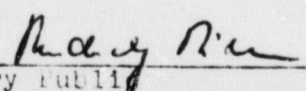
F. O. Kielman, being duly sworn, deposes and says that he is General Manager for the United States, KLM Royal Dutch Airlines, and is the agent of that corporation for the purpose of answering "Plaintiff's First Interrogatories to Each Defendant: (1) JAL, (2) SAS INC. and SAS, and (3) KLM" served on October 29, 1973 and for making this verification;

That he has read the foregoing answers to said interrogatories; and

That said answers are true according to his best knowledge and belief based upon investigations made by cognizant personnel of defendant, but the truth of some of the statements included in said answers is not known to him personally.


F. O. Kielman

Subscribed and sworn to before
me this 17th day of January, 1974.


Notary Public

RUDOLF RICHTER
NOTARY PUBLIC, State of New York
No. 8569020
Qualified in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	73 C 1596 (JFD)
-against-	:	
	:	
JAPAN AIRLINES CO., LTD.,	:	
and	:	
SCANDINAVIAN AIRLINES SYSTEM &	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	
and	:	
KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	

-----x

ANSWERS OF DEFENDANTS
SCANDINAVIAN AIRLINES SYSTEM AND
SCANDINAVIAN AIRLINES SYSTEM, INC.
TO PLAINTIFF'S FIRST INTERROGATORIES

Defendants Scandinavian Airlines System ("SAS") and Scandinavian Airlines System, Inc. ("SAS, Inc.") answer Plaintiff's First Interrogatories as set forth below, such answers being true and complete to the best of their knowledge and belief, without prejudice to such changes or additions as may be necessary should it later appear that any answer given herein is erroneous or incomplete in any respect.

INTERROGATORY 1

"With respect to the patent in suit, No. 3,265,290, does defendant claim there is any difference between the JT-4 engines or compressor thereof now or ever used by defendant and the JT-4 engine or compressor thereof described by each of claims 1, 2, 3, 4 and 5 of said patent, and if the answer is yes, state the difference or differences."

ANSWER TO INTERROGATORY 1

Yes. None of the claims of the Cali patent in suit describes a JT-4A engine, but merely the low pressure compressor section of a jet engine. Figure 1 of the Cali patent 3,265,290 illustrates a conventional prior art JT-4A jet engine low pressure compressor to which Cali contributed only certain welds [designated #76].

INTERROGATORY 2

"Are there any other jet engines now or ever used by defendant besides the JT-4, which includes a compressor stage having a fairing (or pass-out fairing), an adjacent stator, and in which the front edge of said fairing is connected by weld or tie bolts to the rear edge portion of the adjacent stator, and if the answer is yes, identify such engines, and the manufacturer thereof."

ANSWER TO INTERROGATORY 2

No.

INTERROGATORY 3a

"Identify by serial number each JT-4 engine purchased by defendant, either alone or as part of an aircraft."

ANSWER TO INTERROGATORY 3a

SAS, Inc. does not now own and has never owned any JT-4 engines. In 1959 and 1960 SAS purchased seven DC-8-33 aircraft (each having four JT-4A engines) and twenty-two spare engines, for a total of fifty JT-4A engines. In the same years, Swissair ("SWR") purchased three DC-8-33 aircraft and ten spare engines, for a total of twenty-two JT-4A engines. From the beginning of operation of these DC-8-33 aircraft, SAS overhauled both its own engines and the SWR engines, and all these JT-4A engines were treated by SAS and SWR as a pool, without identification of ownership of specific engines in either SAS or SWR. Listed below by

serial number are all seventy-two JT-4A engines referred to above:

610773	610982	611290	611501	611591
610797	611005	611291	611502	611593
610852	611008	611292	611505	611595
610858	611018	611293	611509	611598
610860	611095	611312	611510	611599
610861	611141	611314	611511	611602
610866	611159	611376	611512	611617
610888	611162	611380	611533	611618
610889	611176	611450	611534	611682
610890	611177	611451	611536	611683
610893	611178	611452	611537	611685
610912	611179	611492	611545	611709
610913	611180	611495	611548	611717
610914	611181	611500	611552	611719
610981	611289			

INTERROGATORIES 3b, 3c and 3d

"b) State when each such engine was received."

"c) State when each such engine was first used."

"d) State on what aircraft, by type, such JT-4 engines have been used by defendant."

ANSWER TO INTERROGATORIES 3b, 3c and 3d

Engines serial numbered 610797 and 610913 were received and first used in 1959. The remaining seventy engines were received and first used in 1960. All these engines were used on DC-8-33 aircraft.

All of the engines sold but not removed from the SAS maintenance pool had the weld procedure incorporated therein.

INTERROGATORY 10d(1)

"Identify those engines in the answer to 10(a) which defendant contends had not incorporated therein, on the date of sale or transfer the subject weld procedure (i.e., welding 7th state stator to fairing)."

ANSWER TO INTERROGATORY 10d(1)

All of the engines listed in answer to Interrogatory 10a and not listed in answer to Interrogatory 10c.

INTERROGATORY 10d(2)

"Identify such sold or transferred engines which had tie bolts connecting the stator and fairing."

ANSWER TO INTERROGATORY 10d(2)

None.

INTERROGATORY 11

"Identify all routes to or from any United States territory which are flown by defendant from 1963 to the present time."

ANSWER TO INTERROGATORY 11

The routes to and from the United States over which SAS has operated scheduled services from 1963 to the present time are:

1) Copenhagen-New York. On many flights, one or two of the following intermediate points were also served: Bergen, Glasgow, Gothenburg, Hamburg, Montreal, Oslo, Prestwick, Stavanger.

2) Stockholm-New York. On many flights, one or two of the following intermediate points were also served: Bergen, Oslo, Prestwick, Stavanger.

3) Copenhagen-Los Angeles. On many flights, one or two of the following intermediate points were also served: Bergen, Montreal, Seattle, Søndre Strömfjord.

4) Copenhagen-Seattle.

5) Copenhagen-Chicago. Bergen and/or Montreal were served as intermediate points on some flights.

6) Copenhagen-Anchorage.

7) Tokyo-Anchorage.

INTERROGATORY 12

"Identify each such route for which permission has been given by CAB or any other appropriate authority and identify the nature of such permission and the documents which identify such permission. Please attach a copy of such document to the answer to these interrogatories."

ANSWER TO INTERROGATORY 12

All of the routes described in answer to Interrogatory 11 were operated by SAS pursuant to permission granted by the Civil Aeronautics Board of the United States pursuant to §402 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1372. For the period concerning which inquiry is made, the relevant documents are:

- 1) C.A.B. Order E-20152, approved by the President on November 4, 1963.
- 2) C.A.B. Order E-23956, approved by the President on July 14, 1966.
- 3) C.A.B. Order E-26740, approved by the President on April 30, 1968.

INTERROGATORY 13

"Identify all airline facilities, maintenance, and sales facilities in the United States which are owned by defendant."

ANSWER TO INTERROGATORY 13

The only facility owned in the United States is the administrative headquarters of SAS, Inc., 138-02 Queens Boulevard, Jamaica, New York 11435, which SAS, Inc. owns.

INTERROGATORY 14

"Identify all other maintenance and sales facilities which are not owned but are leased and specify the substance of the significant terms of such lease."

ANSWER TO INTERROGATORY 14

SAS, Inc. has leased in the United States the maintenance and sales facilities set forth below, for the terms and uses stated opposite each location.

<u>Address</u>	<u>Expiration Date</u>	<u>Use</u>
Anchorage International Airport Terminal Building	6/30/74	Station
Terminal Concourse	6/30/75	
Anchorage, Alaska		
230 Peachtree St., N.E. Room 2517	9/30/75	Sales
Atlanta, Georgia		
Prudential Tower Bldg. Suite 4356	10/31/75	Sales
Boston, Mass.		
O'Hare International Airport Chicago, Illinois	[Expired]	Station
Borg-Warner Building 200 South Michigan Ave.	5/31/75	Sales
Chicago, Illinois 60604	5/31/78	Ticket Office
640 Hanna Building 1422 Euclid Avenue	11/30/76	Sales
Cleveland, Ohio		
Parklane Towers West Suite 704-W	10/31/76	Sales
Dearborn, Michigan 48126		

<u>Address</u>	<u>Expiration Date</u>	<u>Use</u>
1102 World Trade Bldg. 1520 Texas Avenue Houston, Texas 77002	4/30/76	Sales
Los Angeles Terminal Building Los Angeles Intl. Airport Los Angeles, Calif.	5/31/90	Station
8929 Wilshire Blvd. Beverly Hills, Calif. 90211	9/30/77	Regional Head- quarters and Sales
607 South Olive Street Los Angeles, California	4/30/75	Sales
444 Brickell Avenue Miami, Florida	6/30/78	Sales
Farmers & Mechanics Savings Bank Bldg. Room 916 Minneapolis, Minn.	2/29/76	Sales
International Arrivals Building J.F. Kennedy Intl. Airport Jamaica, N. Y.	3/11/82	Station
638 Fifth Avenue New York, N. Y.	9/30/74	Sales
71 Broadway New York, N. Y.	4/30/76	Sales
555 Fifth Avenue New York, N. Y.	5/31/78	Sales
2 Penn Center Plaza Philadelphia, Penna.	11/30/78	Sales
130 Post Street San Francisco, Calif.	11/30/76	Sales
Seattle-Tacoma Intl. Airport Seattle, Washington	12/31/98	Station
1120 Fourth Avenue Seattle, Washington	12/31/78	Sales
1725 K Street, N.W. Room 812 Washington, D. C.	11/30/75	Sales

Neither SAS nor SAS, Inc. leases any facilities within the United States for performing major maintenance or overhauls of aircraft or engines.

INTERROGATORY 15

"Does defendant contend that it has plans of a continuing and permanent nature to conduct business as a commercial airline in and to the United States."

ANSWER TO INTERROGATORY 15

SAS is not authorized to conduct and has never conducted interstate air transportation within the meaning of the Federal Aviation Act of 1958. Neither SAS nor SAS, Inc. makes any contention with respect to its plans as a foreign air carrier.

INTERROGATORY 16

"Identify the number of passengers flown in each of the two preceding years from outside the United States to or from any city in the United States."

ANSWER TO INTERROGATORY 16

From October 1, 1971, through September 30, 1972, SAS transported 156,600 passengers from points outside the United States to cities in the United States and 165,700 passengers from cities in the United States to points outside thereof. From October 1, 1972, through September 30, 1973, the corresponding figures were, respectively, 177,200 passengers and 188,000 passengers. Not one of these flights was powered by JT-4A engines.

INTERROGATORY 17

"State the amount of New York State and other state taxes or United States taxes paid in each year from 1963 to the present time."

ANSWER TO INTERROGATORY 17

As far as can be determined, SAS paid no State or United States taxes in the period mentioned, and SAS, Inc. paid no United States taxes. In the past three years, SAS, Inc. paid the following State taxes:

Year ended September 30, 1971 - \$6,295.23

Year ended September 30, 1972 - \$6,557.09

Year ended September 30, 1973 - \$9,512.91

Comparable data for earlier years is not readily available, but the amounts involved are believed to have been comparable.

INTERROGATORIES 18a and 18b

"Identify each facility in the United States where defendant conducts maintenance work of any sort on any of its airplanes."

ANSWER TO INTERROGATORIES 18a and 18b

At the five stations mentioned in answer to Interrogatory 14, SAS has performed line maintenance on aircraft and aircraft engines, including the JT-4A. SAS has, however, never disassembled the compressor of, repaired or overhauled a JT-4A engine in the United States. Engines needing such work have been returned to Sweden, where the necessary work was performed.

INTERROGATORY 19

"Identify any facility in the United States where defendant has hangars or other means for allowing its planes to remain on land for one or more nights."

ANSWER TO INTERROGATORY 19

None.

INTERROGATORY 20

"Identify each route and the cities thereof and the time that defendant has flown such route with respect to the engines identified in interrogatory 3(a)."

ANSWER TO INTERROGATORY 20

SAS's routes and cities are stated in answer to Interrogatory 11. Until December 1970, these routes were flown from time to time with DC-8-33 aircraft equipped with JT-4A engines.

INTERROGATORY 21

"With respect to the engines identified in interrogatory 3(a), state whether the defendant has ever allowed any other airline to use such engines, to borrow such engines or has sold engines and if so, identify the name of such other airline, the nature of the transaction, the dates of such transaction and the document allowing such other airline to operate such engine."

ANSWER TO INTERROGATORY 21

Yes. See the answers to Interrogatories 3a and 10; International Air Lines Technical Pool Agreement.

INTERROGATORY 22

"Has defendant ever transferred or traded or received JT-4 engines from any other airlines in the United States. If the answer is yes, identify such other airline, the dates of such transaction, the nature of such transaction and the documents which describe such transaction."

ANSWER TO INTERROGATORY 22

Yes. SAS has purchased JT-4A engines from airlines in the United States which were resold outside the United States. Engine serial numbers, dates of purchase, selling airlines and SAS Purchase Order numbers were as follows:

<u>Serial Number</u>	<u>Date</u>	<u>Selling Airline</u>	<u>SAS P.O. No.</u>
611219	4/29/70	Eastern	DB 13220
611657	4/29/70	Eastern	DB 13220
611933	4/29/70	Eastern	DB 13220
610793	7/23/70	UAL	2PM0522
611259	7/23/70	UAL	2PM0522
611292	7/23/70	UAL	2PM0522

<u>Serial Number</u>	<u>Date</u>	<u>Selling Airline</u>	<u>SAS P.O. No.</u>
610732	9/1/70	TWA	2PM0725
610872	9/1/70	TWA	2PM0725
610996	9/1/70	TWA	2PM0725
611567	9/1/70	TWA	2PM0725
610864	9/15/70	Braniff	2PM0790
611155	9/15/70	Braniff	2PM0792
611016	2/24/71	TWA	2PM1434
611301	2/24/71	TWA	2PM1434
611796	4/6/71	Delta	2PM1598
611230	7/19/71	Capitol	PW141325
610561	6/6/72	TWA	PW 10000
610661	6/6/72	TWA	PW 10000
611134	6/6/72	TWA	PW 10000
611272	6/6/72	TWA	PW 10000

INTERROGATORIES 23a and 23b

"Will defendant produce copies of some or all of the documents identified in response to the above interrogatories without subpoena or court order?"

"If the answer is yes, please attach copies of such documents to the answers to these interrogatories."

ANSWER TO INTERROGATORIES 23a and 23b

See Response of Defendants SAS and SAS, Inc. to Plaintiff's Notice Pursuant to Rule 34, Dated December 28, 1973.

ANTHONY J. CALI,

Plaintiff,

-against-

JAPAN AIRLINES CO., LTD.,

and

SCANDINAVIAN AIRLINES SYSTEM &

SCANDINAVIAN AIRLINES SYSTEM, INC.,

and

KLM ROYAL DUTCH AIRLINES,

Defendants.

Civil Action No.

73 C 1596 (JFD)

AFFIDAVIT

STATE OF NEW YORK)

: ss.:

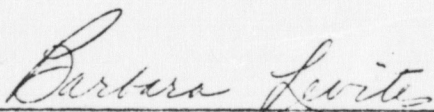
COUNTY OF NEW YORK)

FRANK P. MCCARNEY, being duly sworn, deposes and says that he is the Treasurer of Scandinavian Airlines System, Inc.;

That he has read the foregoing answers of defendants Scandinavian Airlines System and Scandinavian Airlines System, Inc. to Plaintiff's First Interrogatories;

That said answers are true according to his best knowledge and belief based upon investigations made by cognizant personnel of said defendants, but the truth of some of the statements included in said answers is not known to him personally.

Subscribed and sworn to before
me this 18th day of January, 1974



BARBARA LEVITES
Notary Public, State of New York
No. 52-2335015
Qualified in Nassau County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ANTHONY J. CALI,

Plaintiff,

-against-

JAPAN AIRLINES CO., LTD., and
SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM,
INC., and KLM ROYAL DUTCH
AIRLINES,

Defendants.

-----X

:

:

73 C 1596

: CONFERENCE MEMORANDUM
and ORDER

:

:

:

Plaintiff has amended the complaint paragraph 54,
line 1 to insert the word "not" before the word "privileged"
in the cause of action against KLM and the defendant KLM
has correspondingly amended paragraph 54 of its answer so
as to eliminate the first clause so that paragraph 54 stands
as a denial of paragraph 54 of the complaint.

Each of the defendants' answers raises the question
of privileged use of the article of patent pursuant to the
provisions of 35 U.S.C. § 272 providing that it is not an
infringement of a United States Patent for an aircraft of
any country having reciprocal-privilege legislation which
enters the United States temporarily or accidentally to
use - exclusively, for the needs of the aircraft (without

sale or use in the manufacture of anything to be sold in or exported from the United States ~~and~~ - any United States invention. Each defendant will now serve an amended answer on or before April 1, 1974, interposing a claim of privileged use under the Convention of the Union of Paris as revised, Article 5 ter and under Article 27 of the Chicago Convention, so-called (Convention on International Civil Aviation), 61 Stat. 1212, and will also serve a notice to admit the documents which underlie the plea incorporating in the notice their own admissions of the validity of the various treaties, their texts and the data relating to the joinder in the treaty of the various nations involved.

As counsel think there is a substantial possibility that the issue of privileged use is a purely threshold and across-the-board issue which, if ruled against plaintiff, might dispose of much if not all of the case, it was agreed that in principle action on the rest of the issues in the case (dealing with validity, infringement, shop rights, and the effect of transfers of engines, etc.) would be deferred, provided it proves possible to maintain a tight and quick-moving schedule on the convention and statute points.

Meanwhile, it was agreed, unless unexpected difficulties are encountered in doing so, plaintiff may demand discovery of the documents demonstrating the dispositions of the aircraft engines in question by each of the defendants, as it is thought that this matter might bear indirectly or directly on the treaty or statute-privilege point.

Counsel referred to Brown v. Duchesne, 1857, 60 U.S. (19 How.) 183 which, very broadly, held that the use by a foreign vessel of a U.S. Patented improvement installed on the vessel abroad was not an infringement of the U.S. Patent, although used while entering and leaving an American port.

As soon as the notice to admit has been responded to and the supplementary interrogatories, if any, directly related to the contentions revolving around the convention and statute defenses have been served and answered (and the interrogatories must also be served by April 1, 1974), the parties will make whatever motions they then conceive to be appropriate to raise the threshold treaty-statute issue. Plaintiff, for example, might wish to move to strike the treaty-statute defenses, and the defendants

move for judgment on the pleadings (referring also to the admissions and answers to interrogatories) or move for summary judgment. For a variety of reasons it would be desirable to move ahead on the convention-statute point as quickly as possible. If it is not dispositive of any substantial part of the case, it would then be wise to move ahead very quickly on the rest of the case.

It is so ORDERED.

Brooklyn, New York

March 6, 1974.


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
and

SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEMS, INC.,
and

KLM ROYAL DUTCH AIRLINES,

Defendants.
-----X

Civil Action No.

73 C 1596 (JFD)

PLAINTIFF'S RESPONSES TO DEFENDANTS'
FIRST REQUEST FOR ADMISSIONS
DIRECTED TO PLAINTIFF CALI

Plaintiff responds as follows to the Defendants' first request for Admissions.

1. Each aircraft owned or operated by JAL entering into or transiting across the United States within the six year period prior to October 29, 1973 was engaged in international air navigation.

RESPONSE: Admitted.

2. Each aircraft owned or operated by KLM entering into or transiting across the United States within the six year period prior to October 29, 1973 was engaged in international air navigation.

RESPONSE: Admitted.

3. SAS, Inc. did not within the six year period prior to October 29, 1973 own or operate any aircraft.

RESPONSE: Denied. Plaintiff lacks information as to the relationship between SAS Inc. and SAS

4. SAS was at all relevant times and is a consortium comprised of the flag air carrier corporations of Denmark, Norway and Sweden (respectively, Det Danske Luftfartselskab A/S, Det Norske Luftfartselskap A/S and Aktiebolaget Aerotransport), having its principal office in Bromma, Sweden. Each aircraft operated by SAS within the six year period prior to October 29, 1973 was owned by one of the three corporations comprising the consortium and was registered in the country of its owner. (Said aircraft are hereinafter referred to collectively as "SAS aircraft".)

RESPONSE: Plaintiff lacks information as to what constitutes "consortium", but subject to that qualification, admits said request, subject further to the rights of each corporation in said aircraft as defined by their consortium agreement.

5. Each SAS aircraft entering into or transiting across the United States within the six year period prior to October 29, 1973 was engaged in international air navigation.

RESPONSE: Admitted.

6. The English texts of the Paris Convention for the Protection of Industrial Property of 1883 ("Paris Convention") and of its revisions at Brussels (1900), at Washington (1911), at the Hague (1925), at London (1934), at Lisbon (1958), and at Stockholm (1967) contained in the attached Manual of Industrial Property Conventions, First Volume (Exhibit A, officially published by the World Intellectual Property Organization) are complete, accurate and genuine statements of the texts of the Paris Convention and its revisions and are admissible in evidence as proof of the contents of the Convention and its revisions.

RESPONSE: Admitted, subject to the qualification that the United States by Proclamation on

January 2, 1962 pursuant to Resolution of the United States Senate on August 17, 1960 advising and consenting, the "Convention for Protection of Industrial Property" became effective, as set forth in the annexed copy of said Proclamation, Ex. F hereto, 775 OG p.321 - 322; the said Convention being reprinted at 775 OG, p.322-337 annexed as Exh. G.

7. The United States, Japan, the Netherlands, Sweden, Denmark and Norway have acceded to or ratified certain revisions of the Paris Convention, which ratifications or accessions took effect on the dates set forth below and have not been subsequently withdrawn or renounced:

<u>Country</u>	<u>Date on Which Ratification/Accession Took Effect</u>
United States	
Hague revision (1925)	March 6, 1931
London revision (1934)	August 1, 1938
Lisbon revision (1958)	January 4, 1962
Stockholm revision (1967)	September 5, 1970 (Art. 13-30) August 25, 1973 (Art. 1-12)
Japan	
Hague revision (1925)	January 1, 1935
London revision (1934)	August 1, 1938
Lisbon revision (1958)	August 21, 1965
Stockholm revision (1967)	Not yet Ratified
The Netherlands	
Hague revision (1925)	June 1, 1928
London revision (1934)	August 5, 1948
Lisbon revision (1958)	Not Ratified
Stockholm revision (1967)	*
Denmark	
Hague revision (1925)	September 10, 1937
London revision (1934)	August 1, 1938
Lisbon revision (1958)	Not Ratified
Stockholm revision (1967)	April 26, 1970

Norway

Hague revision (1925)	August 1, 1938
London revision (1934)	August 1, 1938
Lisbon revision (1958)	May 10, 1964
Stockholm revision (1967)	*

Sweden

Hague revision (1925)	July 1, 1934
London revision (1934)	July 1, 1953
Lisbon revision (1958)	Not Ratified
Stockholm revision (1967)	October 9, 1970

- * The Netherlands and Norway have signified their intentions to apply the Transitional Provisions.

RESPONSE: Admitted, subject to the same qualification as Admission 6.

8. Japan, the Netherlands, Denmark, Norway, Sweden and the United States were parties to the Paris Convention as revised at the Hague (1925) continuously from before 1944 to October 29, 1973.

RESPONSE: Admitted, subject to the facts of Admission 6.

9. Japan, the Netherlands, Denmark, Norway, Sweden and the United States were parties to the Paris Convention as revised at London (1934) continuously during the six year period prior to October 29, 1973.

RESPONSE: Admitted, subject to the facts of Admission 6.

10. Japan, Norway and the United States were parties to the Paris Convention as revised at Lisbon (1958) continuously during the six year period prior to October 29, 1973.

RESPONSE: Admitted, subject to the facts of Admission 6.

11. The United States is a party to the Paris Convention as revised at Stockholm (1967) and by virtue of Articles 25, 27 and 30 thereof is bound with respect to the Netherlands, Denmark and Sweden by Article 5ter of the revision at London (1934) and is bound with respect to Japan and Norway by Article 5ter of the revision at Lisbon (1958).

RESPONSE: Denied, as seeking a legal conclusion.

12. Article 5ter of the Paris Convention as revised at the Hague (1925) is identical to Article 5ter as revised at London (1934) and at Lisbon (1958). The unofficial English texts of these three revisions are identical in substance to Article 5ter as revised at Stockholm (1967), and the official French texts thereof are identical to Article 5ter as revised at Stockholm (1967).

RESPONSE: Admitted.

13. The attached copy of the Convention on International Civil Aviation of 1944 ("Chicago Convention") (Exhibit B) is a complete, accurate and genuine copy of said Convention and is admissible in evidence as proof of the contents thereof.

RESPONSE: Admitted.

14. The "International Convention for the Protection of Industrial Property" referred to in Article 27 of the Chicago Convention is the "Paris Convention for the Protection of Industrial Property".

RESPONSE: Admitted.

15. The United States, Japan, the Netherlands, Denmark, Norway and Sweden ratified or adhered to the Chicago Convention on the dates set forth below:

United States	-August 9, 1946
Japan	-September 8, 1953
The Netherlands	-March 26, 1947
Denmark	-February 28, 1947
Norway	-May 5, 1947
Sweden	-November 7, 1946

RESPONSE: Admitted.

16. The United States, Japan, the Netherlands, Denmark, Norway and Sweden were contracting States of the Chicago Convention (61 Stat. 1180) continuously during the six year period prior to October 29, 1973.

RESPONSE: Admitted.

17. Exhibit C, comprising copies of Foreign Air Carrier Permits issued pursuant to the below listed Orders of the Civil Aeronautics Board of the United States ("CAB") is a complete, accurate and genuine copy of said Permits and is admissible in evidence as proof of the contents thereof:

- (a) Order No. E-11729 (KLM);
- (b) Order No. E-12945 (KLM);
- (c) Order No. E-21720 (JAL, KLM, SAS);
- (d) Order No. E-21722 (SAS);
- (e) Order No. E-23956 (SAS);
- (f) Order No. E-24295 (JAL);
- (g) Order No. E-26740 (JAL, KLM, SAS);
- (h) Order No. 70-3-143 (KLM); and
- (i) Order No. 70-8-66 (JAL).

RESPONSE: Admitted.

18. The entry into the United States of the DC-8 aircraft owned or operated by JAL which were equipped with the accused JT-4A engines was authorized by one or more Foreign Air Carrier Permits issued pursuant to the following CAB Orders:

Order No. E-21720; Order No. E-24295; Order No. E-26740;
and Order No. 70-8-66.

RESPONSE: Admitted.

19. The entry into the United States of the DC-8 aircraft owned or operated by KLM which were equipped with the accused JT-4A engines was authorized by one or more Foreign Air Carrier Permits issued pursuant to the following CAB Orders: Order No. E-11729; Order No. E-12945; Order No. E-21720; Order No. E-26740; and Order No. 70-3-143.

RESPONSE: Admitted.

20. The entry into the United States of the SAS DC-8 aircraft which were equipped with the accused JT-4A engines was authorized by one or more Foreign Air Carrier Permits issued pursuant to the following CAB Orders: Order No. E-21720; Order No. E-21722; Order No. E-23956; and Order No. E-26740.

RESPONSE: Admitted.

21. The DC-8 aircraft owned or operated by JA¹ which were equipped with the accused JT-4A engines are "aircraft of a contracting state" within the meaning of the Chicago Convention, Article 27.

RESPONSE: Denied, seeking a legal conclusion.

22. The DC-8 aircraft owned or operated by KLM which were equipped with the accused JT-4A engines are "aircraft of a contracting state" within the meaning of the Chicago Convention, Article 27.

RESPONSE: Denied, seeking a legal conclusion.

23. The SAS DC-8 aircraft which were equipped with the accused JT-4A engines are "aircraft of a contracting state" within the meaning of the Chicago Convention, Article 27.

RESPONSE: Denied, seeking a legal conclusion.

24. The complaint in the present action constitutes a claim against JAL, KLM and SAS by a person within the United States that the construction, mechanism or parts of aircraft owned or operated by JAL, KLM and SAS infringe a United States Patent.

RESPONSE: Denied, on the grounds that it seeks a legal conclusion. The Complaint speaks for itself as a claim in the ordinary sense of the word. However, the meaning of the word "claim" as used in Article 27 of the Chicago convention may be a matter of legal interpretation.

25. The nation of Japan has enacted laws which recognize and give adequate protection to inventions made by nationals of the United States.

RESPONSE: Denied. Plaintiff admits that Japan has enacted patent laws, but denies that they give adequate protection to an individual inventor or to Cali himself and require exceptional expenses to provide protection.

26. The Kingdom of the Netherlands has enacted laws which recognize and give adequate protection to inventions made by nationals of the United States.

RESPONSE: Denied. Plaintiff admits that Netherlands has enacted patent laws, but denies they give adequate protection to an individual inventor or to Cali himself and require exceptional expenses to provide protection.

27. The Kingdoms of Denmark, Norway and Sweden each has enacted laws which recognize and give adequate protection to inventions made by nationals of the United States.

RESPONSE: Denied. Plaintiff admits that Denmark, Norway and Sweden have enacted patents laws but denies that they give adequate protection to an individual inventor or to Cali himself and require exceptional expenses to provide protection.

28. The DC-8 aircraft owned or operated by JAL which were equipped with accused JT-4A engines were aircraft of Japan continuously during the six year period prior to October 29, 1973.

RESPONSE: Plaintiff admits that the DC-8 aircraft owned or operated by JAL were equipped with the accused JT4A engines continuously during the six (6) year period prior to October 29, 1973, but denies that such aircraft constituted aircraft of Japan.

29. The DC-8 aircraft owned or operated by KLM which were equipped with the accused JT-4A engines were aircraft of the Netherlands continuously during the six year period prior to October 29, 1973.

RESPONSE: Plaintiff admits that the DC-8 aircraft owned or operated by KLM were equipped with the accused JT4A engines continuously during the six (6) year period prior to October 29, 1973, but denies that such aircraft constituted aircraft of the Netherlands.

30. The SAS DC-8 aircraft which were equipped with the accused JT-4A engines were aircraft of either Denmark, Norway or Sweden continuously during the six year period prior to October 29, 1973.

RESPONSE: Plaintiff admits that the DC-8 aircraft owned or operated by SAS were equipped with the accused JT4A engines continuously during the six (6) year period prior to October 29, 1973, but denies that such aircraft constituted aircraft of Denmark, Norway and Sweden.

31. The entry into the United States of the DC-8 aircraft, owned or operated by JAL which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only periodic.

RESPONSE: Denied, as argumentative as to the meaning of "periodic".

32. The entry into the United States of the DC-8 aircraft, owned or operated by KLM which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only periodic.

RESPONSE: Denied, as argumentative as to the meaning of "periodic".

33. The entry into the United States of the SAS DC-8 aircraft which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only periodic.

RESPONSE: Denied, as argumentative as to the meaning of "periodic".

34. The entry into the United States of the DC-8 aircraft, owned or operated by JAL which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only temporary.

RESPONSE: Denied, as argumentative and seeking a legal conclusion as to temporary. Plaintiff denies the aircraft were here "only temporary".

35. The entry into the United States of the DC-8 aircraft, owned or operated by KLM which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only temporary.

RESPONSE: Denied, as argumentative and seeking a legal conclusion as to temporary. Plaintiff denies the aircraft were here "only temporary".

36. The entry into the United States of the SAS DC-8 aircraft which were equipped with the accused JT-4A engines was, during the six year period prior to October 29, 1973, only temporary.

RESPONSE: Denied, as argumentative and seeking a legal conclusion as to temporary. Plaintiff denies the aircraft were here "only temporary".

37. Exhibit D, comprising copies of the title page, table of contents, and pages 29-30 of R. Foster and M. Ono, The Patent and Trademark Laws of Japan is a complete and accurate English text of §69 of the Patent Law of Japan and is admissible in evidence as proof of the contents of §69 of the Patent Law of Japan.

RESPONSE: Admitted.

38. Exhibit E, comprising copies of the title page, and pages 232(j), 236(f), and 237 of Octrooiwetgeving and copies of English translations and affidavits in support of those translations of §31 of the Patents Act for the Kingdom of the Netherlands Surinam and the Netherlands Antilles and §40 of the Patent Rules of the Netherlands are complete, accurate, and genuine copies of the aforesaid documents and are admissible in evidence as proof of the contents thereof.

RESPONSE: Admitted.

39. The English translations of Exhibit E are complete and accurate English texts of §31 of the Netherlands Patents Act and of §40 of the Netherlands Patent Rules and are

admissible in evidence as proof of the contents thereof.

RESPONSE: Admitted.

40. The nation of Japan affords similar privileges to aircraft of the United States as are afforded to aircraft of Japan by 35 U.S.C. §272.

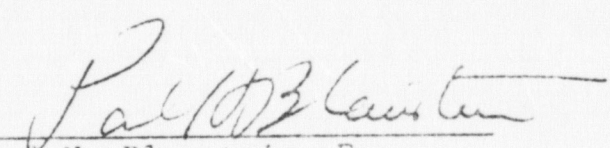
RESPONSE: Denied. Plaintiff has no information as to this request.

41. The Kingdom of the Netherlands affords similar privileges to aircraft of the United States as are afforded to aircraft of the Netherlands by 35 U.S.C. §272.

RESPONSE: Denied. Plaintiff has no information as to this request.

42. Each of the Kingdoms of Denmark, Norway and Sweden affords similar privileges to aircraft of the United States as are afforded to aircraft of said countries by 35 U.S.C. §272.

RESPONSE: Denied. Plaintiff has no information as to this request.


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EXCERPTS FROM EXHIBIT B TO
DEFENDANTS' FIRST REQUEST FOR ADMISSIONS

CONVENTION ON INTERNATIONAL CIVIL AVIATION

[61 Stat. 1180]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

WHEREAS a convention on international civil aviation was formulated in the English language at the International Civil Aviation Conference at Chicago and opened for signature on December 7, 1944, and signed on that date by the Plenipotentiary of the United States of America and on or after that date by the Plenipotentiaries of forty-eight other governments;

WHEREAS the said convention in the English language is word for word as follows:

PREAMBLE

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end.

PART I—AIR NAVIGATION

CHAPTER I

GENERAL PRINCIPLES AND APPLICATION OF THE CONVENTION

Article 1

Sovereignty

The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 2

Territory

For the purpose of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3

Civil and state aircraft

(a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.

(b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

(c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.

(d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

Article 4

Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.

Misuse of civil aviation

CHAPTER II

FLIGHT OVER TERRITORY OF CONTRACTING STATES

Article 5

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Right of non-scheduled flight

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

Article 6

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

Scheduled air services

Article 7

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried

Cabotage

for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Article 8

Pilotless
aircraft

No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

Article 9

Prohibited
areas

(a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.

(b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.

(c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

Article 10

Landing at
customs airport

Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without

landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States.

Article 11

Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Applicability of
air regulations

Article 12

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Rules of the air

Article 13

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

Entry and
clearance
regulations

Article 14

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever,

Prevention of
spread of
disease

plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

Article 15

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Airport and
similar
charges

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

(a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and

(b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

Article 16

The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

Search of
aircraft

CHAPTER III

NATIONALITY OF AIRCRAFT

Article 17

Aircraft have the nationality of the State in which they are registered.

Nationality
of aircraft

Article 18

An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

Dual registra-
tion

Article 19

The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

National laws
governing
registration

Article 20

Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

Display of
marks

Article 21

Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

Report of
registrations

CHAPTER IV

MEASURES TO FACILITATE AIR NAVIGATION

Article 22

Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

Facilitation of
formalities

Customs and
immigration
procedures

Article 23

Each contracting State undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention. Nothing in this Convention shall be construed as preventing the establishment of customs-free airports.

Article 24

Customs duty

(a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

(b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

Article 25

Aircraft in
distress

Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention.

Article 26

In investigation
of accidents

In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the proce-

dures which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

Article 27

(a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.

Exemption
from seizure
on patent
claims

(b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.

(c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

Article 28

Each contracting State undertakes, so far as it may find practicable to:

(a) Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;

(b) Adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational prac-

A1. Aviation
28. Signal
81. Code
83. Signal

tices and rules which may be recommended or established from time to time, pursuant to this Convention;

(c) Collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention.

CHAPTER V

CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT

Article 29

Documents
carried in
aircraft

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention:

- (a) Its certificate of registration;
- (b) Its certificate of airworthiness;
- (c) The appropriate licenses for each member of the crew;
- (d) Its journey log book;
- (e) If it is equipped with radio apparatus, the aircraft radio station license;
- (f) If it carries passengers, a list of their names and places of embarkation and destination;
- (g) If it carries cargo, a manifest and detailed declarations of the cargo.

Article 30

Aircraft radio
equipment

(a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a license to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.

(b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special license for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

Article 31

Certificates of
airworthiness

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

Article 32

(a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.

Licenses of
personnel

(b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

Article 33

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

Recognition
of certificates
and licenses

Article 34

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention.

Journey log
books

Article 35

(a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.

Cargo restric-
tions

(b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a): provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

*Article 36*Photographic
apparatus

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

CHAPTER VI

INTERNATIONAL STANDARDS AND RECOMMENDED
PRACTICES*Article 37*Adoption of
international
standards
and proce-
dure

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including ground marking;
 - (b) Characteristics of airports and landing areas;
 - (c) Rules of the air and air traffic control practices;
 - (d) Licensing of operating and mechanical personnel;
 - (e) Airworthiness of aircraft;
 - (f) Registration and identification of aircraft;
 - (g) Collection and exchange of meteorological information;
 - (h) Log books;
 - (i) Aeronautical maps and charts;
 - (j) Customs and immigration procedures;
 - (k) Aircraft in distress and investigation of accidents;
- and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

*Article 38*Departures
from interna-
tional stand-
ards and
procedures

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own

regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

Article 39

(a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.

Endorsement
of certificates
and licenses

(b) Any person holding a license who does not satisfy in full the conditions laid down in the international standard relating to the class of license or certificate which he holds shall have endorsed on or attached to his license a complete enumeration of the particulars in which he does not satisfy such conditions.

Article 40

No aircraft or personnel having certificates or licenses so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

Validity of
endorsed
certificates
and licenses

Article 41

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment.

Recognition of
existing stand-
ards of air-
worthiness

Article 42

The provisions of this Chapter shall not apply to personnel whose licenses are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licenses remain valid five years after the date of adoption of such standard.

Recognition of
existing stand-
ards of com-
petency of
personnel

* * * *

EDITOR'S NOTE

The foregoing convention was opened for signature at Chicago on December 7, 1944, and has been ratified or adhered to by the following countries on the dates indicated:

Afghanistan	April 4, 1947
Algeria	May 7, 1963
Argentina	June 4, 1946
Australia	March 1, 1947
Austria ¹	August 27, 1948
Barbados	March 21, 1967
Belgium	May 5, 1947
Bolivia	April 4, 1947
Brazil	July 8, 1946
Bulgaria	June 8, 1967
Burina	July 8, 1948
Burundi	January 19, 1968
Cambodia	January 18, 1956
Cameroon	January 15, 1960
Canada	February 13, 1946
Central African Republic	June 28, 1961
Ceylon	June 1, 1948
Chad	July 3, 1962
Chile	March 11, 1947
China ²	February 20, 1946
Colombia	December 2, 1953
Congo (Brazzaville)	October 31, 1947
Congo (Kinshasa)	April 26, 1962
Costa Rica	July 27, 1961
Cuba	May 1, 1958
Cyprus	May 11, 1949
Czechoslovakia	January 17, 1961
Dahomey	March 1, 1947
Denmark	May 29, 1961
Dominican Republic	February 28, 1947
Ecuador	January 25, 1946
El Salvador	August 20, 1954
Ethiopia	June 11, 1947
Finland ³	March 1, 1947
France	March 30, 1949
Gabon	March 25, 1947
Germany, Federal Republic of ⁴	January 18, 1962
Ghana	May 9, 1956
Greece	May 9, 1957
	March 18, 1947

¹ The participation of Austria effected in accordance with the provisions of Article 93 of the convention and resolution of June 9, 1948, by Assembly of ICAO. Effective September 26, 1948.

² Reservation accompanying acceptance of China: "The acceptances are given with the understanding that the provisions of Article IV Section 3 of the International Air Transport Agreement shall become operative insofar as the Government of China is concerned at such time as the Convention on International Civil Aviation . . . shall be ratified by the Government of China." (Chinese instrument of ratification of the Convention on International Civil Aviation deposited February 20, 1946. China denounced the International Air Transport Agreement December 11, 1946, effective December 11, 1947. Notification of denunciation by China of Convention on International Civil Aviation received May 31, 1950; effective May 31, 1951. China deposited another instrument of ratification of the convention December 2, 1953.)

³ The participation of Finland effected in accordance with the provisions of Article 93 of the convention and resolution of June 9, 1948, by Assembly of ICAO. Effective April 29, 1949.

⁴ The participation of the Federal Republic of Germany, effected in accordance with the provisions of Article 93 of the convention and resolution of June 9, 1955, by Assembly of ICAO. Effective June 8, 1956.

Guatemala *	April 28, 1947
Gulnea	March 27, 1959
Guyana	February 3, 1967
Haiti	March 25, 1948
Honduras	May 7, 1953
Hungary	September 30, 1969
Iceland	March 21, 1947
India	March 1, 1947
Indonesia	April 27, 1950
Iran	April 19, 1950
Iraq	June 2, 1947
Ireland	October 31, 1946
Israel	May 24, 1949
Italy *	October 31, 1947
Ivory Coast	October 31, 1960
Jamaica	March 20, 1963
Japan *	September 8, 1953
Jordan	March 18, 1947
Kenya	May 1, 1964
Korea	November 11, 1952
Kuwait	May 18, 1960
Laos	June 13, 1955
Lebanon	September 19, 1949
Liberia	February 11, 1947
Libya	January 29, 1953
Luxembourg	April 28, 1948
Malagasy Republic	April 14, 1962
Malawi	September 11, 1964
Malaysia	April 7, 1958
Mali	November 8, 1960
Malta	January 5, 1965
Mauritania	January 13, 1962
Mauritius	January 30, 1970
Mexico	June 25, 1946
Morocco	November 13, 1956
Nepal	June 29, 1960
Netherlands	March 26, 1947
New Zealand	March 7, 1947
Nicaragua	December 28, 1945
Niger	May 29, 1961
Nigeria	November 14, 1960
Norway	May 5, 1947
Pakistan	November 6, 1947
Panama *	January 18, 1960
Paraguay	January 21, 1946
Peru	April 8, 1946
Philippines	March 1, 1947
Poland	April 6, 1945
Portugal	February 27, 1947
Romania	April 30, 1965
Rwanda	February 3, 1964

* Notification of denunciation by Guatemala of Convention on International Civil Aviation received June 13, 1952. Effective June 13, 1952. Guatemala canceled its notification of denunciation of convention on December 8, 1952, and requested that denunciation be considered as withdrawn.

* The participation of Italy effected in accordance with the provisions of Article 93 of the convention and resolution of May 16, 1947, by Assembly of ICAO. Effective November 30, 1947.

* The participation of Japan effected in accordance with the provisions of Article 93 of the convention and resolution of July 1, 1958, by Assembly of ICAO. Effective October 8, 1958.

* Adherence of Panama contains the following statement: "The Republic of Panama adheres to the said Convention with the Reservation that the Republic of Panama does not accept the word *jurisdiction* appearing in Article 2 of the Spanish version of the Convention as equivalent to the term *susceptibility* appearing in the English text."

Saudi Arabia *	February 19, 1962
Senegal	November 11, 1960
Sierra Leone	November 22, 1961
Singapore	May 20, 1966
Somali Republic	March 2, 1964
South Africa	March 1, 1947
Southern Yemen	January 28, 1970
Spain	March 5, 1947
Sudan	June 29, 1966
Sweden	November 7, 1946
Switzerland ¹⁰	February 6, 1947
Syrian Arab Republic	December 21, 1949
Tanzania ¹¹	April 26, 1964
Thailand	April 4, 1947
Togo	May 18, 1965
Trinidad and Tobago	March 14, 1963
Tunisia	November 18, 1957
Turkey	December 20, 1945
Uganda	April 10, 1967
United Arab Republic	March 13, 1947
United Kingdom	March 1, 1947
United States	August 9, 1946
Upper Volta	March 21, 1962
Uruguay	January 14, 1964
Venezuela	April 1, 1947
Viet-Nam	October 19, 1954
Yemen-Arab-Republic	April 17, 1964
Yugoslavia	March 9, 1960
Zambia	October 30, 1964

* The note of the Embassy of Saudi Arabia transmitting the Saudi Arabian adherence contains the following statement: "The Saudi Arabian Government, in referring to Article 89 Chapter XIX of the Convention, intends to invoke the provisions of that Article vis-a-vis Israel."

¹⁰ The Minister of Switzerland made the following statement in the note transmitting the Swiss instrument of ratification: "My government has instructed me to notify you that the authorities in Switzerland have agreed with the authorities in the Principality of Liechtenstein that this Convention will be applicable to the territory of the Principality as well as to that of the Swiss Confederation, as long as the Treaty of March 29, 1923, integrating the whole territory of Liechtenstein with the Swiss customs territory will remain in force."

¹¹ Tanganyika adhered to the convention on April 28, 1962; it has been in force for the United Republic of Tanzania since April 26, 1964.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.-----
PERMIT TO FOREIGN AIR CARRIER
(as amended)-----
JAPAN AIR LINES COMPANY, LTD.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in Japan, the intermediate points Honolulu, Hawaii, San Francisco, California, New York, New York, and beyond New York, intermediate points in Eire, the United Kingdom, France, Spain, Portugal, Belgium, the Netherlands, Norway, Sweden, Denmark, the Federal Republic of Germany, Switzerland, Austria, Italy, Yugoslavia, Greece, the Union of Soviet Socialist Republics, Turkey, the United Arab Republic, Kuwait, Israel, Lebanon, Iran, Iraq, Saudi Arabia, Pakistan, India, Ceylon, Thailand, Indonesia, Malaysia, Singapore, Vietnam, the Philippines, Hong Kong, Taiwan, and Korea, and a point or points in Japan;
2. Between a point or points in Japan, the intermediate point Honolulu, Hawaii, and the terminal point Los Angeles, California;
3. Between a point or points in Japan, intermediate points in Okinawa, Taiwan, and Hong Kong, and a terminal point in the Philippines;
4. Between a point or points in Japan, the intermediate point Anchorage, Alaska, and the terminal point New York, New York;
5. Between a point or points in Japan, the intermediate point Saipan, Saipan Island, and the terminal point Guam, Guam Island.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permit shall be subject to the following conditions:

(1) Any flight making a scheduled departure from Japan eastbound over segment 1 which makes a scheduled landing at New York, New York, and any flight making a scheduled departure from New York, New York, westbound over segment 1 to Japan must make a scheduled stop at San Francisco, California.

(2) All flights scheduled over segment 1 east of San Francisco, California, shall serve New York, New York.

(3) Scheduled service to the intermediate point Saipan, Saipan Island, on segment 5 shall not be inaugurated until after December 31, 1970.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Japan for Japanese international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Japan shall be parties.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on August 14, 1970. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of Japan, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Japan in lieu of

the holder hereof, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of Japan, effective September 15, 1953, as amended by exchanges of notes effective December 28, 1965 and November 12, 1969: Provided, however, That if prior to the occurrence of the event specified in clause (3) of this paragraph the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Japan are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 18th day of June, 1970.

HARRY J. ZINK

Secretary

(SEAL)

Issuance of this permit
to the holder approved by the
President of the United States
on August 14, 1970,
in Order 70-3-66.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER

JAPAN AIR LINES COMPANY, LTD.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons and their accompanied baggage, as follows:

Between a point or points in Japan and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and a point or points in Europe.

The authority granted herein shall be limited to the disembarking at Anchorage, Alaska, of passengers and their accompanied baggage transported by the holder on scheduled flights operated between a point or points in Japan, and a point or points in Europe and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between a point or points in Japan, and a point or points in Europe: Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between a point or points in Japan, and a point or points in Europe, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Japan for Japanese international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect or that may become effective during the period this permit remains in effect, to which the United States and Japan shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on January 25, 1965, and shall terminate three years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States and Japan are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 25th day of November, 1964.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on January 25, 1965
in Order E-21720.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: January 27, 1965

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of December, 1964

Application of :
: SCANDINAVIAN AIRLINES SYSTEM :
: :
for authorization pursuant to section :
1108(b) of the Federal Aviation Act of :
1958, as amended, to conduct certain :
operations between Anchorage, Alaska, :
and Tokyo, Japan. :

ORDER AMENDING ORDER AUTHORIZING
CERTAIN TRANSIT OPERATIONS

By Order E-13041 dated September 16, 1958, and approved by the President of the United States on October 1, 1958, the Board issued an amended Foreign air carrier permit to Scandinavian Airlines System (SAS) authorizing SAS, inter alia, to engage in foreign air transportation of persons, property, and mail between a point or points in Sweden, a point or points in Denmark, a point or points in Norway, and the terminal point Anchorage, Alaska. By Order E-13042 dated October 2, 1958, the Board, acting pursuant to section 6(b) of the Air Commerce Act of 1926, as amended, 1/ authorized SAS, in essence to combine on the same aircraft transit passengers moving between Europe and Tokyo, Japan, with passengers moving in foreign air transportation between Europe and Anchorage. This latter authorization was made subject to a restriction prohibiting stopovers at Anchorage by the Europe-Tokyo transit passengers.

By Order E-21720, dated November 25, 1964, in the Foreign Air Carrier Service to Alaska Case, Docket 15573 et al., the Board, acting pursuant to section 402, issued a foreign air carrier permit to SAS authorizing it, for a period of three years, to grant stopovers at Anchorage, subject to certain conditions, to their passengers on scheduled flights operated between Tokyo and a point or points in Sweden, Denmark, or Norway. In view of this action it is appropriate to remove the prohibition against stopovers at Anchorage set forth in Order E-13042. The Board finds that such amendment of Order E-13042 is consistent with the applicable law and is in the interest of the public.

1/ Now section 1108(b) of the Federal Aviation Act of 1958, as amended.

In consideration of the foregoing and acting pursuant to the powers vested in the Board by the Federal Aviation Act of 1958, as amended,

IT IS ORDERED:

1. That ordering paragraph 1 of Order E-13042 be and it hereby is amended to read as follows:

"1. That SAS be and it hereby is authorized to navigate between Anchorage, Alaska, and Tokyo, Japan, any aircraft registered under the laws of either Denmark, Norway, or Sweden, which it operates in foreign air transportation over its route from Scandinavia to Anchorage: Provided, that aircraft navigated pursuant to this authorization shall carry only such passengers, property, and foreign mail, as are taken on at points in Scandinavian countries on the Scandinavia-Anchorage route and destined for Tokyo, or taken on in Tokyo and destined for points in the Scandinavian countries, on through flights without stopovers at any United States point, except that stopovers may be made at Anchorage, Alaska, in accordance with the carrier's foreign air carrier permit issued pursuant to Order E-21720, dated November 25, 1964, and subject to the conditions of said permit; and Provided Further, that stopovers at Anchorage may be made only so long as the aforesaid permit remains in effect. In performing the service hereby authorized, SAS shall conform to the provisions of Part 375 of the Board's Special Regulations now in effect or as hereafter amended, relating to transit operations performed by scheduled international air services."

2. That this order shall become effective on January 25, 1965, the date of approval by the President of the United States of Order E-21720, which is issued concurrently herewith.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER

SCANDINAVIAN AIRLINES SYSTEM

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder to engage in foreign air transportation with respect to persons and their accompanied baggage, as follows:

Between a point or points in Sweden, a point or points in Denmark, a point or points in Norway, and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and the terminal point Tokyo, Japan.

The authority granted herein shall be limited to the disembarking at Anchorage, Alaska, of passengers and their accompanied baggage transported by the holder on scheduled flights operated between Tokyo, Japan, and a point or points in Sweden, Denmark, or Norway, and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between Tokyo, Japan, and a point or points in Sweden, Denmark, or Norway: Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between Tokyo, Japan, and a point or points in Sweden, Denmark, or Norway, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Governments of Sweden, Denmark, and Norway for international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Sweden, the United States and Denmark, and the United States and Norway shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic

conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted by this permit shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on January 25, 1965, and shall terminate three years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States, Denmark, Norway, and Sweden are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 25th day of November, 1964.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on January 25, 1965 in Order E-21720.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued pursuant to
Order 70-3-143

PERMIT TO FOREIGN AIR CARRIER
(as amended)

K.L.M. ROYAL DUTCH AIRLINES

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in the Netherlands and the terminal point New York, New York;
2. Between a point or points in the Netherlands, the intermediate point Montreal, Canada, and the terminal point Houston, Texas;
3. Between a point or points in the Netherlands and the terminal point Chicago, Illinois; and
4. Between a point or points in the Netherlands Antilles and the terminal point New York, New York.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Netherlands, a constituent part of the Kingdom of the Netherlands, for international air service of the Kingdom of the Netherlands.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Kingdom of the Netherlands shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto

and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on March 26, 1970. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of the Kingdom of the Netherlands, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the Kingdom of the Netherlands in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of the Kingdom of the Netherlands, effective April 3, 1957, as amended by an exchange of notes effective November 25, 1969; Provided, however, That if prior to the occurrence of the event specified in clause (3) of this paragraph, the operation of the foreign air transportation herein authorized becomes the subject of any other treaty, convention, or agreement to which the United States and the Kingdom of the Netherlands are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 4th day of March, 1970.

HARRY J. ZINK

Secretary

(SEAL)

Issuance of this permit
to the holder approved by the
President of the United States
on March 26, 1970
in Order 70-3-143.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.-----
PERMIT TO FOREIGN AIR CARRIER
(as amended)

K.L.M. ROYAL DUTCH AIRLINES

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules and regulations issued thereunder, to engage in foreign air transportation as follows:

1. Between a point or points in the Netherlands and the terminal point Anchorage, Alaska, with respect to persons, property, and mail.
2. Between a point or points in the Netherlands and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and the terminal point Tokyo, Japan, with respect to persons and their accompanied baggage.

This permit shall be subject to the following conditions:

(1) The foreign air transportation authorized over segment 1 of this permit shall be provided only on scheduled flights operated by the holder between a point or points in the Netherlands and Tokyo, Japan.

(2) The holder in providing service over segment 2 of this permit shall be limited to disembarking at Anchorage, Alaska, passengers and their accompanied baggage transported by the holder on scheduled flights operated between Tokyo, Japan, and a point or points in the Netherlands, and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between Tokyo, Japan, and a point or points in the Netherlands: Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between Tokyo, Japan, and a point or points in the Netherlands, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Netherlands for Netherlands international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Netherlands shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on April 30, 1968, and shall terminate five years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States and the Netherlands are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 29th day of March, 1968.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on April 30, 1968
in Order E-26740.

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER

K.L.M. ROYAL DUTCH AIRLINES

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules and regulations issued thereunder, to engage in foreign air transportation as follows:

1. Between a point or points in the Netherlands and the terminal point Anchorage, Alaska, with respect to persons, property, and mail.
2. Between a point or points in the Netherlands and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and the terminal point Tokyo, Japan, with respect to persons and their accompanied baggage.

This permit shall be subject to the following conditions:

(1) The foreign air transportation authorized over segment 1 of this permit shall be provided only on scheduled flights operated by the holder between a point or points in the Netherlands and Tokyo, Japan.

(2) The holder in providing service over segment 2 of this permit shall be limited to disembarking at Anchorage, Alaska, passengers and their accompanied baggage transported by the holder on scheduled flights operated between Tokyo, Japan, and a point or points in the Netherlands, and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between Tokyo, Japan, and a point or points in the Netherlands: Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between Tokyo, Japan, and a point or points in the Netherlands, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Netherlands for Netherlands international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Netherlands shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on January 25, 1965, and shall terminate three years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States and the Netherlands are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 25th day of November, 1964.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on January 25, 1965
in Order E-21720.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as amended)

Aerlinte Eireann Teoranta, Aerolineas Argentinas, Aeronaves de Mexico S. A., Aero Transportes, S. A. "AREA" Aerovias Ecuatorianas, C. A., Aerovias Interamericanas de Panama, S. A., Aerovias Nacionales de Colombia, S. A., Aerovias "Q", S. A., Aerovias Venezolanas, S. A., Air Ambulance Service, Airwork Limited, Alitalia-Linee Aeree Italiane, S. p. A., British Caribbean Airways, Ltd., British Commonwealth Pacific Airlines Limited, B.N.P. Airways Limited, British Overseas Airways Corporation, British West Indian Airways Limited, Canadian Pacific Air Lines, Ltd., China National Aviation Corporation, Compagnie Nationale Air France, Compania Cubana de Aviacion, S. A., Compania Dominicana de Aviacion, C. por A., "Iberia", Compania Mercantil Anonima de Lineas Aereas, Compania Mexicana de Aviacion, S. A., Compania Nacional de Turismo Aereo "Cinta Limitada", Cuba Aeropostal, S. A., Deutsche Lufthansa Aktiengesellschaft, El AL Israel Airlines Limited, Empresa de Transportes Aerovias Brasil, S. A., Empresa Guatemalteca de Aviacion, Expreso Aereo Inter-Americano, S. A., Guest Aerovias Mexico, S. A., Japan Air Lines Company, Ltd., K.L.M. Royal Dutch Airlines, Laurentian Air Services Limited, Laurentide Aviation, Limited, Leavens Bros. Limited, Linea Aeropostal Venezolana, Lineas Aereas Costarricenses, S. A., Loftleidir H. F., Ontario Central Airlines Limited, Pacific Western Airlines, Ltd., Philippine Air Lines, Inc., Qantas Empire Airways Limited, Rutas Aereas Nacionales, S. A., S. A. Empresa de Viacao Aerea Rio Grandense (VARIG), Scandinavian Airlines System, Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA), Swissair, Swiss Air Transport Company Limited, TACA International Airlines, S. A., Transportes Aereos Nacionales, S. A., Trans-Canada Air Lines, Wong Aviation Limited, are hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in charter trips in foreign air transportation without regard to the points named in the foreign air carrier permit or permits heretofore issued to them authorizing each of said carriers to engage in foreign air transportation of individually ticketed passengers or individually waybilled property.

The authority herein granted shall as to each of said carriers extend only to foreign air transportation of the class or classes of traffic that

such carrier is authorized by an effective foreign air carrier permit to transport in foreign air transportation on an individually ticketed or individually waybilled basis.

Each foreign air carrier named herein shall conform to the airworthiness and airman competency requirements prescribed by its own government for international air service.

This permit, as amended, shall be subject, as to each foreign air carrier named herein, to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit, as amended, remains in effect, to which the United States and the country of such foreign air carrier shall be parties.

The exercise of the privileges granted hereby shall be subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit, as amended, each foreign air carrier named herein waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit, as amended.

This permit, as amended, shall be effective 60 days after the date of its approval by the President of the United States: Provided, however, That prior to the date on which this permit, as amended, would otherwise become effective, the Board either on its own initiative, or upon the filing of a petition or petitions seeking reconsideration of the Board's order of August 12, 1958 (Order No. E12945), insofar as such order authorizes the issuance of this permit, as amended, may by order or orders extend such effective date from time to time. This permit, as amended, shall continue in effect as to each foreign air carrier named herein only so long as such foreign air carrier is the holder of an effective foreign air carrier permit authorizing it to engage in foreign air transportation on an individually ticketed or individually waybilled basis.

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- 3 -

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 12th day of August, 1958.

/s/ Chan Gurney
Acting Chairman

(SEAL)

ATTEST:

/s/ Phyllis T. Kaylor
Acting Secretary

THE WHITE HOUSE

APPROVED:

/s/ Dwight D. Eisenhower

September 6, 1958

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER
(as amended)

K. L. M. ROYAL DUTCH AIRLINES

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Civil Aeronautics Act of 1938, as amended, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in the Netherlands, intermediate points in the United Kingdom, Eire, Newfoundland, and the Azores, and the terminal point New York, N. Y.;
2. Between a point or points in the Netherlands, intermediate points in the United Kingdom, Eire, Iceland, Greenland, Newfoundland, the Azores, and Montreal, Canada, and the terminal point Houston, Tex.;
3. Between a point or points in the Netherlands Antilles, the intermediate points Ciudad Trujillo, Dominican Republic; Port-au-Prince, Haiti; Kingston and Montego Bay, Jamaica; and Camaguey and Havana, Cuba, and the terminal point Miami, Florida; and
4. Between a point or points in the Netherlands Antilles and the terminal point New York, N. Y.

The holder hereof shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Netherlands for the Netherlands international air service.

This permit, as amended, shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit, as amended, remains in effect, to which the United States and the Netherlands shall be parties.

This permit, as amended, shall be subject to the condition that in the event any practice develops which the Board regards as inimical

to sound economic conditions the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit, as amended, shall be effective from the date of its approval by the President of the United States. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit, as amended, shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of the Netherlands, (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the Netherlands in lieu of the holder hereof, or (3) upon the termination or expiration of the air transport agreement between the Government of the United States and the Government of the Netherlands, effective April 3, 1957; Provided, however, That if prior to the occurrence of the event specified in clause (3) of this paragraph, the operation of the foreign air transportation herein authorized becomes the subject of any other treaty, convention, or agreement to which the United States and the Netherlands are or shall become parties, then and in that event this permit, as amended, is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit, as amended, to be executed by its Chairman and the seal of the Board to be affixed hereto, attested by the Secretary of the Board on the 16th day of August, 1957.

/s/ James R. Durfee
Chairman

(SEAL)

ATTEST:

/s/ Marvin Bergaman
Acting Secretary

THE WHITE HOUSE

APPROVED:

/s/ Dwight D. Eisenhower

August 23, 1957

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.-----
PERMIT TO FOREIGN AIR CARRIER
(as amended)

SCANDINAVIAN AIRLINES SYSTEM

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in Sweden, a point or points in Denmark, and a point or points in Norway; intermediate points in that portion of Germany north of the 52nd parallel; intermediate points in the United Kingdom, Eire, Iceland, Greenland, the Azores, Labrador, Newfoundland, Canada, and the Province of Quebec, Canada, and the alternate terminal points New York, N.Y., and Chicago, Ill.;
2. Between a point or points in Sweden, a point or points in Denmark, a point or points in Norway, an intermediate point in Greenland, and the co-terminal points Seattle, Wash., and Los Angeles, Calif.
3. Between a point or points in Sweden, a point or points in Denmark, a point or points in Norway, and the terminal point Anchorage, Alaska.

The holder hereof shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Governments of Sweden, Denmark, and Norway for international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Sweden, the United States and Denmark, and the United States and Norway shall be parties.

The exercise of the privileges granted hereby shall be subject to (a) the condition that Scandinavian Airlines System shall submit to the Board a true copy of each agreement amending the Consortium Agreement between Aktiebolaget Aerotransport, Det Danske Luftfartselskab A/S, and Det Norske Luftfartselskap A/S, entered into on February 8, 1951, and (b) such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on July 14, 1966. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating from the routes described in the Air Transport Agreements between the United States and Denmark (effective January 1, 1945, as amended by an exchange of notes dated March 21, 1946, August 6, 1954, July 8, 1958, and June 7, 1966), the United States and Norway (effective October 15, 1945, as amended by an exchange of notes dated August 6, 1954, July 8, 1958, and June 7, 1966), or the United States and Sweden (effective January 1, 1945, as amended by an exchange of notes dated December 4, 1945, August 6, 1954, July 8, 1958, and June 7, 1966), the routes substantially comparable to the routes described herein, (2) upon the effective date of any permit granted by the Board to any other carrier designated by Denmark, Norway, or Sweden in lieu of the holder hereof, (3) upon the cancellation or termination of the said Consortium Agreement, (4) upon the withdrawal of any contracting party from the said Consortium Agreement, or the transfer of any of the rights or obligations of any such contracting party, (5) upon the addition of a new contracting party to the Consortium Agreement, or (6) upon the termination or expiration of any one of the aforementioned Air Transport Agreements: Provided, however, That if prior to the occurrence of the event specified in clause (6) of this paragraph, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States, Denmark, Norway, and Sweden are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 29th day of June, 1966.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on July 14, 1966
in Order E-23956.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.-----
PERMIT TO FOREIGN AIR CARRIER
(as amended)

JAPAN AIR LINES COMPANY, LTD.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in Japan, the intermediate points Honolulu, Hawaii, San Francisco, Calif., New York, N.Y., and beyond New York, intermediate points in Eire, the United Kingdom, France, Spain, Portugal, Belgium, the Netherlands, Norway, Sweden, Denmark, the Federal Republic of Germany, Switzerland, Austria, Italy, Yugoslavia, Greece, the Union of Soviet Socialist Republics, Turkey, the United Arab Republic, Kuwait, Israel, Lebanon, Iran, Iraq, Saudi Arabia, Pakistan, India, Ceylon, Thailand, Indonesia, Malaysia, Singapore, Vietnam, the Philippines, Hong Kong, Taiwan, and Korea, and a point or points in Japan;
2. Between a point or points in Japan, the intermediate point Honolulu, Hawaii, and the terminal point Los Angeles, Calif.;
3. Between a point or points in Japan, intermediate points in Okinawa, Taiwan, and Hong Kong, and a terminal point in the Philippines.

The holder hereof shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permit shall be subject to the following conditions:

- (1) Any flight operating eastbound from Japan which makes a scheduled landing at New York, N.Y., and any flight operating westbound to Japan which makes a scheduled departure from New York, N.Y., must make a scheduled stop at San Francisco, Calif.

(2) All flights scheduled over segment 1 east of San Francisco, Calif., shall serve New York, N.Y.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Japan for Japanese international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Japan shall be parties.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on **October 14, 1966**. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of Japan, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Japan in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of Japan, effective September 15, 1953, as amended by an exchange of notes effective December 28, 1965: Provided, however, That if prior to the occurrence of the event specified in clause (3) of this paragraph the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Japan are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 22nd day of September, 1966.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit
to the holder approved by the
President of the United States
on **October 14, 1966**
in Order E-24295.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.-----
PERMIT TO FOREIGN AIR CARRIER
(as amended)

SCANDINAVIAN AIRLINES SYSTEM

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons and their accompanied baggage, as follows:

Between a point or points in Sweden, a point or points in Denmark, a point or points in Norway, and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and the terminal point Tokyo, Japan.

The authority granted herein shall be limited to the disembarking at Anchorage, Alaska, of passengers and their accompanied baggage transported by the holder on scheduled flights operated between Tokyo, Japan, and a point or points in Sweden, Denmark, or Norway, and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between Tokyo, Japan, and a point or points in Sweden, Denmark or Norway: Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between Tokyo, Japan, and a point or points in Sweden, Denmark, or Norway, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Governments of Sweden, Denmark, and Norway for international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Sweden, the United States and Denmark, and the United States and Norway shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted by this permit shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on April 30, 1968, and shall terminate five years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States, Denmark, Norway, and Sweden are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 29th day of March, 1968.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on April 30, 1968
in Order E-26740.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued pursuant to
Order No. E-26740

PERMIT TO FOREIGN AIR CARRIER
(as amended)

JAPAN AIR LINES COMPANY, LTD.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons and their accompanied baggage, as follows:

Between a point or points in Japan and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and a point or points in Europe.

The authority granted herein shall be limited to the disembarking at Anchorage, Alaska, of passengers and their accompanied baggage transported by the holder on scheduled flights operated between a point or points in Japan, and a point or points in Europe and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between a point or points in Japan, and a point or points in Europe. Provided, however, That such passengers and accompanied baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between a point or points in Japan, and a point or points in Europe, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Japan for Japanese international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Japan shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound

economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on April 30, 1968, and shall terminate five years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States and Japan are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 29th day of March, 1968.

HAROLD R. SANDERSON

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on April 30, 1968
in Order E-26740.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
ANTHONY J. CALI,

Plaintiff,

-against-

Civil Action No.
73 C 1596 (JFD)

JAPAN AIRLINES CO., LTD.,

and

SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.,

and

KLM ROYAL DUTCH AIRLINES,

Defendants.
----- x

PARTIAL ANSWERS OF DEFENDANTS
SCANDINAVIAN AIRLINES SYSTEM AND
SCANDINAVIAN AIRLINES SYSTEM, INC.
TO PLAINTIFF'S SECOND INTERROGATORIES

Defendants Scandinavian Airlines System ("SAS") and
Scandinavian Airlines System, Inc. ("SAS, Inc.") answer
Plaintiff's Second Interrogatories as set forth below, such
answers being true and complete to the best of their knowledge
and belief, without prejudice to such changes or additions
as may be necessary should it later appear that any answer
given herein is erroneous or incomplete in any respect.

INTERROGATORY 32

"Describe the business of SAS INC."

ANSWER TO INTERROGATORY 32

SAS, Inc. is authorized to act on behalf of SAS, as
its agent in North America (in the name of SAS or SAS, Inc.),
in all business and financial matters within or pertaining
to the traffic and sales activities of SAS in this Territory,
and within this authority performs such functions as may from

time to time be directed by SAS. The present functions of SAS, Inc. for the North American Division of SAS are:

Leasing for the use of SAS in the Territory rights and privileges to use airports, offices, loading ramps and the like; furnishing or arranging for communications service, weather reports and other flight aids; furnishing or arranging for the servicing, maintenance, repair and dispatching of the aircraft of SAS; leasing ticket office accommodations or other office space and the furnishing and equipment of same; issuing in the name of SAS of tickets, bills of lading and other necessary authorizations for air transportation; the preparation and issuance of tariffs, timetables and other public documents in the name of SAS; and the giving of customs bonds on behalf of SAS and the making of all requisite arrangements on behalf of SAS with immigration and military authorities.

INTERROGATORY 33

"State whether SAS INC. purchases aircraft parts from Pratt & Whitney in the U.S."

ANSWER TO INTERROGATORY 33

No.

INTERROGATORY 34

"Identify the nature of the assets and property owned by SAS INC. in the U.S. and identify specifically all airline support and maintenance facilities."

ANSWER TO INTERROGATORY 34

SAS, Inc. owns (in addition to the administrative building identified in answer to Interrogatory 13) the following types of personal property in the United States: Office furniture; office equipment; motor vehicles; workshop equipment & tools; and aircraft (ramp) service equipment.

INTERROGATORY 35

"Identify any document or documents which define the legal rights which constitute the 'consortium' relationship of the corporations of SAS. Please produce copies of such documents."

ANSWER TO INTERROGATORY 35

A copy of most recent (1962) revision of the SAS Consortium Agreement is annexed to these Answers. The period of validity set forth in section 18, paragraph 1, is in the process of being extended to 1995.

INTERROGATORY 36

"Has SAS INC bought or sold any aircraft or aircraft parts?"

ANSWER TO INTERROGATORY 36

No.

INTERROGATORY 37

"Identify each aircraft or engine pool in or outside the U.S. that SAS or SAS INC. was a member of since 1964 to date."

ANSWER TO INTERROGATORY 37

SAS, Inc. is not and has not since 1964 been a member of any aircraft pool or engine pool in or outside the United States. Pursuant to stipulation, the time to respond to this Interrogatory on behalf of SAS has been extended.

INTERROGATORY 38

"Identify all agreements that SAS or SAS INC had which relate to aircraft or aircraft [engine] pools."

ANSWER TO INTERROGATORY 38

SAS, Inc. has and has had no agreements relating to aircraft pools or aircraft engine pools. Pursuant to stipulation, the time to respond to this Interrogatory on behalf of SAS has been extended.

INTERROGATORY 39

"Identify and please produce copies of all documents relating to aircraft or aircraft engine pools which include the JT-4 engine. This request for document is intended to cover basic agreement or understandings."

ANSWER TO INTERROGATORY 39

Pursuant to stipulation, the time to respond to this Interrogatory has been extended.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
-against-	:	
	:	73 C 1596 (JFD)
JAPAN AIRLINES CO., LTD.,	:	
and	:	
SCANDINAVIAN AIRLINES SYSTEM &	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	<u>AFFIDAVIT</u>
and	:	
KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	

----- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FRANK P. MCCARNEY, being duly sworn, deposes and says that he is the Treasurer of Scandinavian Airlines System, Inc.;

That he has read the foregoing partial answers of defendants Scandinavian Airlines System and Scandinavian Airlines System, Inc. to Plaintiff's Second Interrogatories;

That said answers are true according to his best knowledge and belief based upon investigations made by cognizant personnel of said defendants, but the truth of some of the statements included in said answers is not known to him personally.

/s/ Frank P. McCarney

Subscribed and sworn to before
me this 24th day of April, 1974

/s/ Barbara Levites

BARBARA LEVITES
Notary Public, State of New York
No. 52-2335615
Qualified in Nassau County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

-against-

JAPAN AIRLINES CO., LTD.,

and

SCANDINAVIAN AIRLINES SYSTEM &

SCANDINAVIAN AIRLINES SYSTEM, INC.,

and

KLM ROYAL DUTCH AIRLINES,

Defendants.

-----x

SUPPLEMENT TO
DEFENDANTS' FIRST REQUEST FOR ADMISSIONS
DIRECTED TO PLAINTIFF CALI

Defendants Japan Airlines Co., Ltd. (hereinafter "JAL")
KLM Royal Dutch Airlines ("KLM"), Scandinavian Airlines System
("SAS"), and Scandinavian Airlines System, Inc. ("SAS, Inc.")
admit that each of the following statements is true and request
plaintiff Anthony J. Cali ("Cali"), pursuant to Rule 36, F.R.C.P.,
to admit within thirty (30) days after service of this request,
for the purpose of the above entitled action only, that each of
the following statements is true:

43. Exhibit H, comprising the title page and pages 172
through 189 of the June 1968 issue of Industrial Property
published by the United International Bureau for the Protection
of Intellectual Property (BIRPI), is a complete and accurate

English text of the patent statutes of Denmark, Norway and Sweden which were in force and effect from January 1, 1968 to the present and is admissible in evidence as proof of the contents of the patent statutes of such nations for such periods of time.

44. Exhibit I, comprising copies of the title page and pages 9 through 18 of The Swedish Acts Relating to Patents, Trademarks, and Unfair Competition and published by the Society of Swedish Patent Agents, in a complete and accurate English text of the patent statutes of Sweden which were in force and effect from October 23, 1967 through December 31, 1967 and is admissible in evidence as proof of the contents thereof.

45. Exhibit J, comprising copies of the title page and pages 1 through 10 of The Danish Patent Act and published by the Danish Comptroller of Patents, is a complete and accurate text of the patent statutes of Denmark which were in force and effect from October 23, 1967 through December 31, 1967 and is admissible in evidence as proof of the contents thereof.

46. Exhibit K, comprising copies of pages 536 through 543 of the Norges Lov 1682-1963 as published in 1964 is a complete and accurate Norwegian text of the patent statutes of Norway which were in force and effect from October 23, 1967 through December 31, 1967 and is admissible in evidence as proof of the contents thereof.

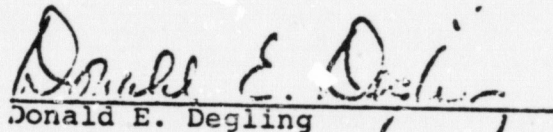
47. Exhibit L, comprising copies of an English translation of certain sections of Exhibit K is a complete and accurate English text of Section 6 and Sections 1, 9, 11, 13-33, 45, 47

and 48 of Exhibit K and is admissible in evidence as proof of the contents thereof.

48. Exhibit G, annexed to Plaintiff's Admissions to Defendants' First Request for Admissions entitled the "Convention of Paris for the Protection of Industrial Property," is identical in every respect to Section Fl, pages 1 through 24 of Exhibit A and is the complete, accurate and genuine statement of the Paris Convention as revised at Lisbon (1958).

49. The date upon which the Paris Convention as revised at Lisbon became effective in the United States as set forth in Exhibit F annexed to Plaintiff's Admissions to Defendants' First Request for Admissions is the same effective date, to wit, January 4, 1962, as set forth in Paragraph 7 of those Requests for Admissions.

Dated: June 7, 1974
New York, New York

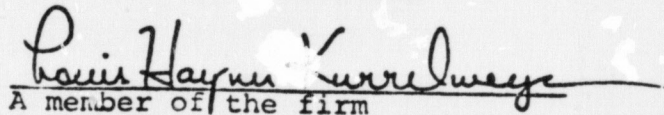

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
-against-	:	73 C 1596 (JFD)
	:	
JAPAN AIRLINES CO., LTD.,	:	NOTICE OF DEFENDANTS'
.and	:	MOTION FOR SEPARATE
SCANDINAVIAN AIRLINES SYSTEM &	:	<u>TRIAL</u>
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	
.and	:	
KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	


-----x

S I R S:

Please take notice that upon the annexed affidavit of Louis Hayner Kurrelmeyer, with the exhibits attached, sworn to June 25, 1974, and upon all prior pleadings and proceedings had herein, the undersigned will move this Court, before the Honorable John F. Dooling, Jr., in Room 640, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on July 8, 1974, at 9:30 A.M. or as soon thereafter as counsel can be heard, for an Order pursuant to Federal Civil Rule 42(b) directing a separate trial by the Court sitting without a jury of the issues raised by those of defendants' respective affirmative defenses which are grounded upon 35 U.S.C. 272, upon the Convention on International Civil Aviation (61 Stat. 1212), and upon the Paris Convention for the Protection of Industrial Property of 1883, which are set forth in paragraphs 15, 16 and 17 of the

Amended Answer of Defendants Scandinavian Airlines System and Scandinavian Airlines System, Inc., in paragraphs 56C, 56D and 56E of the Amended Answer of defendant KLM Royal Dutch Airlines' Answer, and in paragraphs 19E, 19F and 19G of the Amended Answer of defendant Japan Airlines Co., Ltd., on the grounds that the issues raised by these affirmative defenses are threshold issues, a favorable decision upon which would avoid an expensive and lengthy trial on the issues of patent validity, infringement, and damages, and that separate trial of the issues raised by these affirmative defenses will be conducive to expedition and economy.

Dated: New York, New York
June 26, 1974

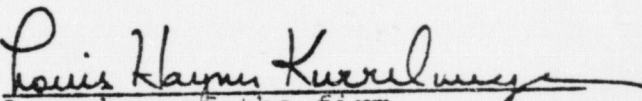

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ANTHONY J. CALI,

Plaintiff,

-against-

JAPAN AIRLINES CO., LTD.,

and
SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.,

and
KLM ROYAL DUTCH AIRLINES,

Defendants.

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Civil Action No.

73 C 1596 (JFD)

AFFIDAVIT IN SUPPORT
OF MOTION FOR SEPARATE
TRIAL

Louis Hayner Kurrelmeyer, being duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and the bar of this Court, and am a partner of the firm of Hale Russell & Stentzel, attorneys for defendants SAS and SAS, Inc. I am personally familiar with all prior proceedings herein.

2. This affidavit is submitted in support of defendants' motion, pursuant to Federal Civil Rule 42(b), for a separate trial on the issue of immunity raised by those of the defendants' affirmative defenses which are grounded upon 35 U.S.C. 272, upon the Convention on International Civil Aviation (61 Stat. 1212) (the "Chicago Convention"), and upon the Paris Convention for the Protection of Industrial Property of 1883, as revised (the "Paris Convention"). These affirmative defenses are set forth in paragraphs 15, 16 and 17 of the Amended Answer of Defendants Scandinavian Airlines System and Scandinavian Airlines System, Inc.,

in paragraphs 56C, 56D and 56E of the Amended Answer of defendant KLM Royal Dutch Airlines and in paragraphs 19E, 19F and 19G of the Amended Answer of defendant Japan Airlines Co., Ltd. A separate trial is sought on the grounds that these issues are threshold issues, a favorable decision upon which would avoid an expensive and lengthy trial on the issues of patent validity and infringement, and that a separate trial of the issues raised by these affirmative defenses will be conducive to expedition and economy. The issues raised by 35 U.S.C. 272 and by the Conventions are more fully discussed in the Affidavit of Professor Andreas F. Lowenfeld, annexed hereto as Exhibit I.

STATEMENT OF FACTS

3. This is an action for patent infringement brought by the plaintiff, an airline mechanic for Pan American Airlines, Inc., who obtained a patent upon a repair procedure used in repairing and maintaining JT-4 jet engines which were used to power certain DC-8-33 aircraft. As revealed by their respective Answers to Plaintiff's First Set of Interrogatories, each of the defendant airlines has during some portion of the six years next preceding commencement of this action owned and operated to the United States DC-8-33 aircraft, some of which were powered by allegedly infringing JT-4 engines. Plaintiff alleges that this use constitutes infringement of his patent. Each of the defendant airlines is, insofar as operations to the United States are concerned, engaged only in international air navigation; and each of the aircraft involved were registered in a foreign country.

4. The defendants have raised as an affirmative defense

the issue of patent invalidity. Defendants intend to fully litigate this issue because they believe there are overwhelming grounds which establish the invalidity of plaintiff's patent. Proof of the defense of validity will be extremely time consuming and expensive.

5. However, the defendants have raised three closely related affirmative defenses any one of which, if decided in defendants' favor, would be entirely dispositive of this action. These defenses are based upon 35 U.S.C. 272, upon Article 27 of the Convention on International Civil Aviation (Chicago Convention) and upon Article 5ter of the Paris Convention for the Protection of Industrial Property of 1883, as revised, (Paris Convention) each of which on its face immunizes defendants from claims of patent infringement upon aircraft and engines used thereon owned by nationals of a foreign country, registered in foreign countries and operated by nationals of foreign countries, provided all relevant countries are parties to said Conventions, all aircraft are used solely for international air navigation and are not permanently based within the United States, and all relevant countries have patent statutes which provide reciprocal protection for aircraft of the United States. As the affidavit of Professor Andres F. Lowenfeld (Exhibit A, hereto) shows, these international Conventions and the patent statute (35 U.S.C. 272) are part of a consistent plan to immunize aircraft in international navigation from claims of patent infringement.

6. The issues of patent validity and infringement present essentially different issues of fact from those raised by the affirmative defenses based upon the Conventions and 35 U.S.C. 272. A trial of the patent validity and infringement issues would be

exceedingly complex, time consuming, expensive and would require the presentation of a substantial amount of evidence which is not related to the aforesaid threshold question of immunity from infringement. Moreover, a decision for the defendants on any one of the affirmative defenses of immunity would be entirely dispositive of this action. The affirmative defense of immunity is, therefore, particularly appropriate for separate trial.

WAIVER OF TRIAL BY JURY
ON THIS ISSUE

7. On March 6, 1974 during a pretrial conference before Judge Dooling at which counsel for all parties were present, counsel for plaintiff waived any right to a trial by jury of the immunity issues presented by the affirmative defenses which are the subject of this motion.

ISSUES WHICH MAY ARISE
IN THE TRIAL OF THE
AFFIRMATIVE DEFENSES

8. Based upon the prior proceedings in this action, it is anticipated the the following questions may be tried at the separate trial being requested herein:

- a. Whether the alleged use of the JT-4 aircraft engine by defendants falls within the immunity given by 35 U.S.C. 272 and by the Chicago and Paris Conventions.
- b. Whether the DC-8-33 aircraft owned by defendants and operated to the United States are "aircraft of a contracting State" within the meaning Article 27 of the Chicago Convention.
- c. Whether the laws of Japan, and the Kingdoms of the Netherlands, Denmark, Norway and Sweden recognize

and give adequate protection to inventions made by nationals of the United States.

- d. Whether the aircraft upon which the accused engines were used were "aircraft of" the respective countries in which said aircraft were registered within the terms of Article 5ter of the Paris Convention for the Protection of Industrial Property of 1883.
- e. Whether the entry of the aircraft and engines within the United States were "periodic" and "only temporary"

Therefore, it is expected that there will be testimony on the meaning of foreign law and upon the extent of the presence of the accused engines within the United States during the period in question. The defendants expect to offer testimony that the JT-4 engines were used only upon DC-8-33 aircraft, that the home base for operation and maintenance of the DC-8-33s were in the home countries of the defendant airlines, that the scheduled use of all such aircraft allowed for generally only a few hours of turnaround time in the United States, that any longer presence in the United States was accidental, and that no overhaul or major repair work was performed on the accused engines within the United States. Defendants may offer further testimony to establish the applicability of 35 U.S.C. 272 and the Paris and Chicago Conventions to the operations at question herein.

9. Defendants cannot predict whether plaintiff will offer any evidence to controvert the evidence presented by defendants. It may be that the defendants' evidence will not be controverted and that the Court will be able to determine the issues presented solely as a matter of law. However, in view

of the possibility that plaintiff may choose to dispute defendants' version of the facts, use of summary judgment does not appear appropriate to test these affirmative defenses.

10. Defendants submit that a full trial on the issues of validity and infringement will be very complex and expensive and time consuming to the Court and all parties. The threshold issue of immunity under the patent statute and the Paris and Chicago Conventions--any one of which defendants submit is a separate and complete defense to this action--can be determined prior to the determination of the issues of validity and infringement. In the interest of judicial economy and expedition, a separate trial of this issue should be ordered.

CONCLUSION

Wherefore, defendants pray that their motion for a separate trial on the issue of immunity raised by 35 U.S.C. 272 and the Paris and Chicago Conventions be granted.

Louis Hayner Kurrelmeyer
Louis Hayner Kurrelmeyer

Sworn to before me this

26th day of June, 1974

Stephen C. Pascual
Notary Public

STEPHEN C. PASCUAL
Notary Public, State of New York
No. 0121278
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY J. CALI,

Plaintiff

v.

JAPAN AIRLINES CO., LTD.,
and

SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.

and

KLM ROYAL DUTCH AIRLINES,

Defendants
----- X

Civil Action No.

73 C 1596 (JFD)

AFFIDAVIT OF LAW

ANDREAS F. LOWENFELD, being duly sworn, deposes and
says:

1. I am Professor of Law at the New York University School of Law. I currently teach International Law and Institutions, International Economic Transactions, Conflict of Laws, and Aviation Law; in the past I have also taught Civil Procedure and Regulation of American Business Abroad. I am a member of the Bar of the State of New York, the District of Columbia, and the United States Supreme Court.

I am co-author (with Professor Chayes of Harvard Law School and Dean Ehrlich of Stanford Law School) of a basic case and textbook on international law, International Legal Process, (two volumes plus Documents Supplement, Little, Brown 1968-69); editor and co-author of Expropriation in the Americas, published under the auspices of the Inter-American Legal Center at Columbia University (Dunellen 1971); author of Aviation Law:

Cases and Materials, (Matthew Bender, 1972); and of about 35 law journal articles and reviews in the fields of international law, international economic transactions, comparative law, conflict of laws and aviation law. I am fluent in German, have a good working knowledge of French and Spanish, and have a reading knowledge of Dutch. I have lectured as a Visiting Professor at Stanford University School of Law, at the Foreign Service Institute at the U.S. Department of State, and at numerous professional panels and symposia.

Prior to joining the faculty of law of New York University I spent five and one-half years as a member of the staff of the Office of Legal Adviser of the United States Department of State, serving successively as Special Assistant to the Legal Adviser (1961-63), Assistant Legal Adviser for Economic Affairs (1963-65) and Deputy Legal Adviser (1965-66). In these positions I was a member or head of numerous delegations to international conferences on aviation law conducted under the auspices of the International Civil Aviation Organization, and was a principal adviser, negotiator and draftsman in connection with bilateral air transport matters between the United States and countries with which it maintains air transport services agreements. I represented the United States in one of the two inter-governmental arbitrations that it has participated in since World War II, involving interpretation of the Air Transport Services Agreement between the United States and Italy. While I was not personally involved in the international patent relations of the United States, my office was responsible for legal advice to the Office of Business Practices in the Department of State which has jurisdiction within the United States government over industrial property conventions.

In the course of supervising the members of my staff directly engaged in this work I became generally familiar with the rights, obligations, and procedures flowing from those conventions to which the United States is a party.

I have testified frequently before committees of the Congress, both as a government official and since I have been a professor, on aspects of the relation of international to domestic law and in particular on the legal effects within this country of treaties and other international agreements to which the United States is a party.

2. In connection with the present actions and at the request of counsel for defendants, I have examined pertinent provisions of the Paris Convention for the Protection of Industrial Property of 1883, in particular as amended at The Hague in 1925; the Chicago Convention on International Civil Aviation of 1944; the United States patent law as revised in 1952, in particular 35 U.S.C. §272; as well as the legislative history and annotations thereto. I have also examined the sections of the patent statutes of the Netherlands, Japan, Denmark, Sweden, and Norway relevant to the legal issues raised in this action. Finally, I have consulted numerous legal commentaries that I thought might shed light on the question presented, and I have also consulted orally with the Senior Legal Officer of the International Civil Aviation Organization in Montreal, the Director of the Office of Business Practices in the United States Department of State, and the author of the leading American treatise on international protection of industrial property. Those sources that yielded relevant information are discussed or cited in this affidavit. No source that I consulted contained or communicated any information or view inconsistent with the conclusion that I reached as the result of my investigation.

3. The question put to me was whether an engine used by a foreign air carrier on aircraft registered in a foreign country can infringe a United States patent if the aircraft on which the engine is installed is engaged in regular operations to and from the United States.^{1/} The relevant facts as I understand them are that the aircraft on which the accused engines are installed are or have been engaged in regular service between points in the home country or countries of the respective carriers, various intermediate points, and points in the United States and beyond; that such carriers maintain terminal and ticket selling facilities in the United States; but that no major maintenance, overhaul or modification of the engines in question has been conducted in the United States. The aircraft in question remain in the United States only long enough to discharge their passengers, cargo, and mail, to replenish fuel and provisions, and to take on passengers, cargo, and mail for the return flight, all in accordance with the schedule of operations pursuant to duly issued foreign air carrier permits and the relevant bilateral Air Transport Services Agreements.

4. While one might think, on first consideration, that any unlicensed use in the United States of engines subject to a United States patent must be, prima facie, unlawful, I have come to the clear conclusion, after thorough investigation, that

^{1/} I have not been asked, and would in any event not be competent, to give my opinion on whether plaintiff's patent is valid or whether the accused engine incorporates the alleged invention of said patent. For purposes of this affidavit, accordingly, I proceed as if the answer to both of these questions were affirmative, and I focus only on the question of whether, given such assumption, there could be an infringement. Further, I proceed on the assumption that the only possible infringement at issue concerns use of the accused engine in the United States, and that neither manufacture nor sale of said engine by defendants in the United States is here involved.

the use of the engines in the manner described is privileged under United States law as well as under international law, and cannot therefore constitute an infringement. The theory of the privilege, spelled out further below, appears to be that the requirements of international commerce for unhampered transit of ships and aircraft outweigh the small loss to inventors involved in the creation of such limited privilege, and that the protection of inventors of operating equipment for ships and aircraft at the place of manufacture or sale provides sufficient incentive to inventors so that there will be no loss to continued advancement in the science of shipbuilding and aircraft manufacture. If the inventor wishes further protection, of course, it is possible for him to secure patents in the foreign countries where the equipment in question may be manufactured, sold or installed.

The Paris Convention for the Protection
of Industrial Property

5. The first international conference on industrial property that considered the problem of inventions used on foreign ships and airplanes was the Conference of the International Union for the Protection of Industrial Property (the Paris Union) that convened at The Hague between October 8 and November 6, 1925. This was one of the series of intergovernmental conferences held from time to time since 1883 under the auspices of the Paris Union to discuss problems relating to world-wide protection of industrial property, and, where appropriate to propose amendments to the basic treaty.^{2/}

^{2/} Pursuant to the Stockholm Convention of 1967 establishing the World Intellectual Property Organization (WIPO), the Paris Union, as well as the Berne Union dealing with protection of literary and artistic works are to be replaced over time by the new WIPO. Article 25 of the Stockholm Convention contains an obligation on contracting parties to adopt internal laws in accordance with their respective constitutions, necessary to ensure the application of the Convention; and further recites the understanding that at a

According to the official records of the proceedings of The Hague Conference,^{3/} the proposal to deal by exemption with the problem of temporary or accidental entry of navigation equipment covered by a patent in the country of landing was among the amendments to the Paris Convention proposed to the Conference by its Secretariat.^{4/} The proposal was formally submitted at the behest of the French delegation, pursuant to the recommendation of the Committee for the Protection of Industrial Property of the International Chamber of Commerce.^{5/} That Committee, recognizing that the principle of exemption from local patent laws for the operating equipment of foreign ships and aircraft was already incorporated in the laws of various countries, had polled its national committees on the subject in 1923. All the national committees that replied -- representing Belgium, Czechoslovakia, France, Great Britain, Italy, the Netherlands, and Norway --

time when a country deposits its instrument of ratification or accession, it will be in a position under its domestic laws to give effect to the provisions of the Convention. Articles 27 and 30 contain the transitional provisions confirming that the Paris Convention and its various amendments, including the one made at The Hague in 1925, continue in effect until the Stockholm Convention is adopted by all the parties to the prior conventions. Article 5 ter of the Paris Convention as amended at The Hague, which is the provision relevant to the present case, is repeated as Article 5 ter of the new convention.

^{3/} Union Internationale Pour la Protection de la Propriété Industrielle, Actes de la Conference Reunie à La Haye, 8 Octobre Au 6 Novembre 1925 (Berne 1926), hereafter "Hague Proceedings".

^{4/} Hague Proceedings 339.

^{5/} The detailed account here relied on is from La Propriété Industrielle, the official journal of the International Union for the Protection of Industrial Property, Vol. 42, pp. 221-225 (1926).

had responded affirmatively to the proposal to embody this idea in an international treaty, and in March of 1924 the Industrial Property Committee of the International Chamber of Commerce had drafted the proposal that was subsequently submitted to The Hague Conference. At its Congress in Brussels in June 1925, the International Chamber of Commerce formally approved the draft for transmission to the staff of the Paris Union preparing The Hague Conference. At the same time, a survey was made of the domestic legislation of the countries of the world with respect to this subject -- whether or not they belonged to the Paris Union. The survey revealed that 21 out of 65 countries polled had legislation to the same effect on their books,^{6/} and a twenty-second -- France -- had before its Chamber of Deputies a draft substantially identical to the draft submitted to The Hague Conference. Thus, one-third of all of the countries then in existence, and more than half of the membership of the Paris Union (which then stood at 37 countries) had by domestic law exempted operating equipment used on foreign means of transport while in their ports. Only one country -- not a member of the Paris Union -- had considered the question and had rejected the idea of an exemption for these purposes.

6. With this background before the Conference, the draft prepared by the International Chamber of Commerce and submitted by France went through without serious opposition. The draft was assigned to Subcommittee 2 of The Hague Conference, and as it began its work a telegram was read to the delegates from a member of the Institute of Aeronautical Engineers, endorsing the proposal on behalf of the Third International

^{6/} Either in the patent laws themselves or, as in the Netherlands, by regulation pursuant to statutory authorization.

Congress on Aerial Navigation, meeting in Brussels at the same time as the Industrial Property Union was meeting in The Hague. It was suggested in Subcommittee 2 that the second paragraph of the draft of what became Article 5 ter of the Paris Convention as amended was already covered by Article 18 of the Paris Convention relating to the Regulation of Aerial Navigation of 1919,^{7/} but various delegates pointed out that not all members of the Paris Union for the Protection of Industrial Property were signatories to the Aerial Navigation Convention.^{8/} The British delegation wanted to make certain that the proposed exemption from the patent laws did not extend to sale of patented products in the ports where the foreign ships or aircraft were temporarily present, and this was confirmed with explicit reference to the words in the draft "provided that such devices are used there exclusively for the needs of the vessel."^{9/}

The Czechoslovakian delegation asked for details on the meaning of the word "temporarily". Did that expression include also instances of regular and in particular periodic entry of foreign ships into the territorial waters of the patent country? The Subcommittee answered this question affirmatively:

^{7/} The Aerial Navigation Convention was one of the conventions signed at the Versailles Peace Conference. See, M. Hudson, 1 International Legislation 359, 11 L.N.T.S. 174.

^{8/} It is pertinent to point out that the proposed provisions of Article 5 ter and the Paris Aerial Navigation Convention were not in fact alike in that the Aerial Navigation Convention only provided for release of aircraft in case of attachment on the ground of patent infraction and not for exemption from the patent laws as such. See Paragraph 13 of this affidavit infra.

^{9/} 42 La Propriété Industrielle op cit. Note 5 at 223, Col. 2.

"The terms 'temporarily' or 'accidentally' have been chosen precisely in order to give the benefit of the provision both to ships that enter the [patent] country's waters by design -- whether periodically or exceptionally -- in order to put into port during a more or less short time, and to vessels that arrive in a country unintentionally as the result of a fortuitous event."^{10/}

The draft that became Article 5 ter was reported out of Subcommittee 2 without opposition,^{11/} changed slightly and re-reported out of the drafting committee,^{12/} and on November 5, 1925 adopted unanimously by the plenary session of The Hague Conference.

The final text of Article 5 ter (in the official English translation) reads as follows:

ARTICLE 5 ter

In each of the contracting countries the following shall not be considered as infringements of the rights of a patentee:

1. the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of a country, provided that such devices are used there exclusively for the needs of the vessel;
2. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories to such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the country.

^{10/} 42 La Propriété Industrielle op. cit. Note 5 at 223, Col. 3.

^{11/} Hague Proceedings at 435.

^{12/} Hague Proceedings at 521.

7. Having thus explored the legislative history of Article 5 ter of the Paris Convention as amended at The Hague, I proceed to analysis of its terms in so far as they are here relevant. In this task I have made use of the materials previously cited, plus the leading American work in the field of international industrial property protection, Stephen P. Ladas, The International Protection of Industrial Property (1930)^{13/} pp. 247-250; a leading casebook on international business transactions, Lawrence F. Ebb, Regulation and Protection of International Business, pp. 507-512 (1964 plus Supp. 1968); and the Official Guide to the Paris Convention prepared by Professor Bodenhausen, who was until this year the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI).^{14/} I have also consulted various books on patent laws of particular countries. So far as I have been able to discover, after diligent search, no court in any country has had occasion to construe the article here at issue. Thus, my conclusions are derived from examination of secondary authorities as well as from my own analysis.

(i) Article 5 ter is based on reciprocity -- in that it is applicable not to all foreign ships, aircraft, or vehicles, but only to those belonging to nationals of other countries in the Paris Convention or otherwise entitled to its benefits. This concept

^{13/} A new edition of this work is presently in final stages of preparation. Mr. Ladas read to me over the telephone the pertinent excerpt from the galley for the new edition. Apart from some supporting secondary citations, the text on the relevant point remains verbatim the same as in §156 of the 1930 edition.

^{14/} G.H.C. Bodenhausen, Guide to the Paris Convention for the Protection of Industrial Property (BIRPI 1968).

is, of course, carried forward in 35 U.S.C. §272, which also speaks of any vessel, aircraft, or vehicle "of any country which affords similar privileges..."

The critical factor is not where the invention was made or the product manufactured, but whether the vessel, aircraft, or vehicle is registered in a country entitled to the benefits of the Convention.

(ii) The second paragraph of Article 5 ter, applicable to aircraft, is limited to devices that relate to construction or operation of the aircraft or vehicle. Thus, it seems that, for instance, the electric organ carried in the lounges in some aircraft for the entertainment of the passengers might not come within the exemption, and if it were covered by a patent in the landing state it could be carried only subject to license. But navigation and communications equipment, fuel tanks, items in the hull itself, and, of course, engines are clearly entitled to the exemption.

(iii) It is very clear, as brought out also in the legislative history discussed at pp. 8-9 above, that the draftsmen of Article 5 ter contemplated two different situations that would give rise to an exemption from the landing states' patent laws -- the accidental arrival of a ship or aircraft in distress, which was wholly non-controversial -- and the intentional but temporary arrival which was subject to some discussion but was agreed on unanimously. If the arrival was accidental it doesn't matter how long the vessel, aircraft or vehicle remains in port. For instance, if

the Queen Elizabeth 2, recently disabled at sea, were towed to the nearest country that had a shipyard, she would not need to make an elaborate check of the patent situations of all the gear she carried, and could remain at such place until her engines were restored to proper working conditions, however long that took. Until her accident, however, the Queen Elizabeth 2 would be entitled only to the exemption for temporary stay in the waters of, say, the United States -- long enough to discharge her passengers and cargo, re-provision and refuel, and take on new passengers and cargo, but not long enough to become a hotel, such as her older sister ship the Queen Mary did.

(iv) No precise definition of "temporary" appears in Article 5 ter. It is clear, however, that repeated or periodic visits, as by a ship calling in the same port on its regular run or an airplane operating scheduled services to and from a particular terminal, are covered by Article 5 ter. Indeed, it was precisely the latter situation that was before the draftsmen. The goal was to be sure that international transport could be carried on freely without the need of obtaining patent licenses at each port of call, and without having to keep track of which railroad car or what aircraft could be dispatched to which foreign country. Only if the item were sold in the foreign country (or if it were manufactured aboard the vessel while in a foreign port) would the exemption not be applicable.

Law of the Countries of Registry

8. I turn now briefly to the issue of whether the countries in which the defendants' aircraft are registered accord to foreign aircraft the exemption that is sought in this case from the United States. If one or more of the countries here concerned had not adopted the substance of Article 5 ter into their domestic legislation (or had not previously enacted legislation to the same effect) an elaborate inquiry might be necessary as to the character of the Paris Convention as internal law, i.e. whether that country's adoption of the Convention made it effective without more in its own courts. Since each of the countries here pertinent has at all relevant times had in effect a statute or statutory instrument carrying out the obligations of Article 5 ter and comparable to §272 of the United States Patent Law, such inquiry is not here necessary.

(i) I have examined (in translation) the Patent Law of Japan (Law No. 127) of April 13, 1959 (as amended in 1962, 1964, 1965, and 1970) and in particular Article 69 thereof, which reads as follows:

[1.] The effect of a patent right shall not extend to the working of the patented invention for the purpose of experiment or research.

2. The effect of a patent right shall not extend to the things mentioned below:

(1) A ship or airplane which merely passes through the State of Japan or a machine, implement, apparatus or any other thing which is used on these;

(2) A thing which has been existent within the State of Japan from the time of the patent application.

As I read Paragraph 2(1) of that Article, the legal monopoly derived from the grant of a patent by the government of Japan does not extend to ships or airplanes "which merely pass through" the territory of Japan, that is to ships or airplanes temporarily or accidentally in the territory of that country. While the choice of the quoted words is perhaps not as clear as it might be, any other interpretation of those words would create a direct conflict between the Patent Law and the Paris Convention as amended at The Hague, of which Japan is a member. There is no evidence or reason to believe that such conflict exists or was intended. I should add that following my own research on this point I have had the opportunity of checking my conclusion against the opinion of law rendered in this matter by Mr. Kazuhiko Tanaka of the Tokyo law firm of Tanaka, Tamaki, and Nishi by Opinion Letter of April 4, 1974, (Exhibit A) and I find my conclusion confirmed in all respects.

(ii) I have examined (in the original Dutch) the Netherlands patent law of November 7, 1910 and in particular Articles 30 and 31 thereof, as well as the relevant provision of the regulation issued thereunder. Article 30 of the Statute defines the scope of the rights that comprise the patent grant in the Netherlands, and Article 31 authorizes the government by regulation of general application to exclude from the scope of patent grant means of transport or objects belonging thereto that belong abroad but are temporarily within the Kingdom. Article 40 of Regulation No. 1083 of

September 22, 1921 contains such a regulation of general applicability and specifically excludes such means of transport and objects belonging thereto that are temporarily within the Kingdom for (inter alia) the purpose of transportation of persons and goods:

Section 40.

1. Vehicles and objects belonging to vehicles as referred to in section 31 of the Patents Act, shall be ignored when considering whether a patent has been infringed, if their owner is established outside the Kingdom, and if they are temporarily in the territory of the Kingdom for no other purpose contrary to section 30 of the Patents Act, than for use in or for the enterprise of the owner, being an enterprise of agriculture, horticulture, silviculture, live stock, farming, or peat-cutting, or consisting in letting these vehicles, or the transportation of persons or goods.

2. Vehicles let in their entirety shall be considered temporarily to be within the territory of the Kingdom only if they do not remain there longer than three months without interruption. Vehicles used for transporting persons or goods, which have not been let in their entirety, shall be considered temporarily to be within the territory of the Kingdom only if that transportation serves for transporting persons or goods across the border of the Kingdom.

As mentioned in Paragraph 5 of this Affidavit, the Netherlands regulation was one of those that served as a model for Article 5 ter of the Paris Convention as amended at The Hague. (See La Propriété Industrielle op. cit. Note 5 at 222-23). There can be no doubt that the Netherlands statute plus implementing regulation meet all the requirements of Article 5 ter, and that pursuant thereto ships, airplanes, and other vehicles

of foreign registry and ownership engaged in transportation to and from the Netherlands are exempt from the application of the Netherlands patent laws. My conclusion on this point is confirmed by Telders and Croon, Nederlandsch Octrooirecht, Handboek voor de Praktijk (Netherlands Patent Law, Handbook for the Bar) (The Hague, 1946), which states, at page 314, that the provision is in all relevant respects coterminous with the obligation contained in Article 5 ter, referring also to the sources for discussion of that article relied on in the present affidavit. Further, I can add that I have had an opportunity to see the Opinion Letter of April 11, 1974 from Mr. T. Schaper, an attorney in The Hague, (Exhibit B) which confirms my conclusions.

(iii) The aircraft used by SAS are, I am advised, registered in (and owned by corporations of) Denmark, Sweden, and Norway in accordance with a formula set out in the Consortium Agreement establishing the Scandinavian Airlines System. As of January 1, 1968, the three countries whose airlines made up SAS (as well as Finland) have "harmonized" their patent laws -- roughly equivalent in the United States to adoption of a uniform law by the legislatures of the several states.^{15/} Thus, from 1968 on it is necessary to look at only one legislative text applicable in all three of the Scandinavian countries in question.^{16/} Accordingly,

^{15/} See Borggard (Director General, Patent Office, Stockholm) "The New Nordic Patent Legislation", 7 Industrial Property 189, (June 1968) accompanying the text of the Nordic Patent Laws cited in footnote 16 infra.

^{16/} The full text of the Nordic Patent Laws is set out in English in 7 Industrial Property at 172-189 (July 1968).

I have examined section 5 of the Nordic Patent Laws, which reads as follows:

A patent shall not prevent the exploitation of the invention on foreign vessels, aircraft or other foreign means of transport for their needs when they enter this country in regular traffic or otherwise.

The Government^{1/} may decree that, without being hindered by a patent, spare parts and accessories to aircraft may be imported into this country and may be employed here for the repair of the aircraft of a foreign country in which corresponding privileges are granted in relation to the aircraft of this country.

^{1/} The term "Government" used in this translation should be understood to mean: in the case of Denmark, the "Minister of Commerce"; in the case of Norway and Sweden, the "King in Council"; and in the case of Finland, "by (governmental) decree."

Again, the first paragraph of section 5 explicitly follows Article 5 ter of the Paris Convention for the Protection of Industrial Property, as amended at The Hague. The second paragraph relating to spare parts and limited to aircraft (as contrasted with vessels or vehicles) appears designed to conform to Article 27(b) of the Chicago Convention on International Civil Aviation discussed at Paragraph 14(iii) of this Affidavit. Thus, the provision concerning spare parts, like the corresponding provision in the Chicago Convention, depends on reciprocal implementation; the provision concerning the vessels or aircraft themselves and their equipment, like Article 5 ter of the Paris Convention, is immediately binding on the signatories.

It may be noted that Section 5 of the Nordic Patent Laws, the text most recently adopted of the various provisions examined in this Affidavit, makes explicit what is implicit in the earlier texts, that no difference results for purposes of patent law from the fact that one aircraft may be operating a scheduled service while another may be operating a charter flight. For present purposes, I am clear that Section 5 of the Nordic Patent Laws is in every respect fully consistent with Article 5 ter of the Paris Convention as amended at The Hague, and that by adopting this provision, Sweden, Denmark, and Norway, are fully in compliance with the obligations contained in Article 5 ter. Again I can add that I have had the opportunity to see an Opinion Letter dated May 3, 1974, from Mr. Christer Onn of the Stockholm Patent Bureau of Zacco and Bruhn, which confirms my conclusion.

(iv) For the law applicable in the Scandinavian countries prior to January 1, 1968, it is necessary to look at the patent laws of the individual countries. I have accordingly examined the laws of Sweden, Denmark and Norway respectively. In each country it is clear that the relevant legislation carries out the obligation of Article 5 ter of the Paris Convention as amended at The Hague.

(a) Section 5 of the Danish Patent Act as published in Law Notification No. 361 of December 19, 1958, after stating that without the consent of the patent holder no person may make, import, use, or sell a patented article or article manufactured by patented processes, continues:

Irrespective, however, of patents granted:

1. Articles being appurtenances to means of communication belonging to other countries, may be used in connection with those means during their temporary presence in this country, and
2. Articles supplied as appurtenances to means of communication bought abroad for Danish account, or to Danish ships which by reason of damage have been repaired abroad, may afterwards be used as such appurtenances in this country.

Lest there be any misunderstanding concerning this translation (by the Danish Controller of Patents) I add only my understanding that the phrase "means of communication belonging to other countries", like the phrase "vessels of other countries" in Article 5 ter of the Paris Convention as amended at The Hague, refers not to state-owned vessels or aircraft but to means of communication registered in and owned by nationals of a foreign country.

(b) The same concept as in Danish law prevailed in the Swedish Patents Act of 1881 as amended, which was in force in that country until the entry into effect of the Nordic Patent Laws. Section 16 of the Swedish Patents Act read, in pertinent part:

Where a vessel or other transport vehicle not domiciled in the Kingdom enters its territory, whether regularly or accidentally, the patent grant shall not be deemed infringed by the use of the invention for the needs of such vehicle or vessel.

Again, it is clear that for present purposes, a vessel or aircraft registered in the United States would have been entitled to use its equipment while temporarily or

accidentally in Sweden, in full enjoyment of the provisions of Article 5 ter of the Paris Convention as amended at The Hague, and without concern as to possible conflict with any patents that might have been in effect in Sweden.

(c) Article 6 of the Norwegian Patent Law of 1910 (Law No. 4 of July 2, 1910) as amended by Law No. 20 of July 17, 1953, read as follows:

A patent shall not prevent the exploitation of means of transportation and appurtenances thereof during temporary presence in this country.

It may be decreed pursuant to agreement with a foreign state that, without being hindered by a patent, spare parts and accessories may be brought into Norway and used here for the repair of an aircraft which is registered in said other state.

It may be noted that this text is the closest of the three antecedents to what became Section 6 of the harmonized Nordic Patent Laws. Again, as in the uniform Nordic Patent Laws and in the Danish Patent Act, the second paragraph, added by the 1953 amendment, relates to spare parts and is confined to aircraft -- clearly designed to carry out Article 27(b) of the Chicago Convention on International Civil Aviation. Likewise, there is no doubt that the first paragraph expressly carries out the obligation of Article 5 ter of the Paris Convention as amended at The Hague.

In summary, the uniform law applicable since 1968 to the countries whose carriers make up the Scandinavian Airlines System is in full accord with the relevant provision of the Paris Convention as amended at The Hague, so that there is no need in regard to any particular aircraft of SAS to inquire in which of the three countries it is registered. Prior to 1968, the texts of the three relevant statutes were different, and there may have been minor differences in application, for instance with respect to spare parts or with respect to the unusual situation (virtually never applicable to airlines) where nationality and domicile might be different. In so far as the reciprocity provision of the United States Patent Law is concerned, 35 U.S.C. §272, there can be no doubt that any aircraft belonging to the Scandinavian Airlines System would come clearly within that section.

Supporting Authorities

9. In order to satisfy myself of the correct interpretation of Article 5 ter of the Convention and of the respective implementing laws, I have also referred to a French treatise on patents, A. Casalonga, Traité Technique et Pratique des Brevets d'Invention, Vol. 2, pp. 131-132 (1949); two English treatises, T. A. Blanco White, Patents for Inventions, at pp. 76, 240, and 396 (2d ed. 1955); and Terrell On The Law Of Patents, at pp. 157 and 462 (12 ed. Falconer et al 1971).^{17/} I have also referred to a German commentary on patents and trademarks, E. Reimer, Patentgesetz und Gebrauchsmustergesetz --- Systematischer Kommentar, at pp. 440-43 (3rd ed. 1968). Each of these commentaries confirms

^{17/} Both of the English treatises refer to S. 70 of the English Patent Act of 1949, which substantially tracks Article 5 ter of the Paris Convention as amended at The Hague.

the interpretations presented above.

United States Law

10. The United States did not enact a statute comparable to the Japanese, Dutch, and Scandinavian statutes discussed above until the general revision of the United States Patent Law in 1952. However, it is clear that 35 U.S.C. §272 was a codification of existing United States law, deriving from a Supreme Court case of 1856 as well as from Article 5 ter of the Paris Convention as amended at The Hague.

The report accompanying the patent law revision (identical in both Houses) said:

This section follows the requirement of the International Convention for the Protection of Industrial Property, to which the United States is a party, and also codifies the holding of the Supreme Court that use of a patented invention on board a foreign ship does not infringe on a patent. 18/

The provisions of the Paris Convention referred to have been discussed at length in preceding sections of this Affidavit, and need not be repeated here. The Supreme Court case, Brown v. Duchesne, 60 U.S. (19 How.) 183 (1856), is worth summarizing, to point out that participation by the United States in the Paris Convention as amended at The Hague was, on the point here at issue, in every way consistent with the prior United States law. Plaintiff, who held a United States patent for an improvement in construction of the gaff of sailing vessels^{19/} asserted that defendant, a master of a French schooner, has used the improve-

^{18/} House Rep. No. 1923, May 12, 1952 to accompany H.R. 7794 at 28, (82d Cong. 2d Sess. 1952); S. Rep. No. 1979, June 27, 1952 to accompany H.R. 7794 at 28, (82d Cong. 2d Sess. 1952), reproduced in [1952] 2 U.S. Cong. and Admin. News at 2394, 2422.

^{19/} According to Webster's New International Dictionary, "gaff" is defined as "the spar upon which the head, or upper edge, of a fore-and-aft sail is extended."

ment in question in Boston without plaintiff's consent. Defendant admitted use of the improvement on the schooner, but said that he was a French subject and that the vessel was built in France, was owned and operated by French subjects, and at the time of the alleged infringement was on a lawful voyage under the flag of France from a French possession to Boston and back. The court upheld defendant's plea, saying:

The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal -- because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish.

. . .

[The patent laws of the United States] do not, and were not intended to, operate beyond the limits of the United States; and as the patentee's right of property and exclusive use is derived from them, they cannot extend beyond the limits to which the law itself is confined. And the use of it outside of the jurisdiction of the United States is not an infringement of his rights, and he has no claim to any compensation for the profit or advantage the party may derive from it.

The chief and almost only advantage which the defendant derived from the use of this improvement was on the high seas, and in other places out of the jurisdiction of the United States. The plea avers that it was placed on her to fit her for sea. If it had been manufactured on her deck while she was lying in the port of Boston, or if the captain had sold it there, he would undoubtedly have trespassed upon the rights of the plaintiff, and would have been justly answerable for the profit and advantage he thereby obtained....

But, so far as the mere use is concerned, the vessel could hardly be said to use it while she was at anchor in the port, or lay at the wharf. It was certainly of no value to her while she was in the harbor; and the only use made

of it, which can be supposed to interfere with the rights of the plaintiff, was in navigating the vessel into and out of the harbor, when she arrived or was about to depart, and while she was within the jurisdiction of the United States. Now, it is obvious that the plaintiff sustained no damage, and the defendant derived no material advantage, from the use of an improvement of this kind by a foreign vessel in a single voyage to the United States, or from occasional voyages in the ordinary pursuits of commerce; or if any damage is sustained on the one side, or any profit or advantage gained on the other, it is so minute that it is incapable of any appreciable value.

[Plaintiff argued that it was not necessary for him to show actual damages in order to recover, if defendant was in fact infringing on his patent.]

This view of the subject, however, presupposes that the patent laws embrace improvements on foreign ships, lawfully made in their own country, which have been patented here. But that is the question in controversy... The court is of opinion that cases of that kind were not in the contemplation of Congress in enacting the patent laws, and cannot, upon any sound construction, be regarded as embraced in them.

60 U.S. (19 How.) at 194-197

It may be noted that while the precise point at issue in Brown v. Duchesne, as in the present case, has not again come before the Supreme Court, the Brown case was recently quoted with approval by the Supreme Court in a case arising from 35 U.S.C. §271 concerning exports of unassembled components of an invention, Deepsouth Packing Co. Inc. v. Laitram Corp., 406 U.S. 518, 526 (1972).

Chicago Convention on International Civil Aviation

11. Finally, I have been asked to examine with reference to this case the Convention on International Civil Aviation signed at Chicago in 1944. That Convention, adhered to by more than 125 countries, including all those relevant to the present case, established the framework within which international commercial aviation has been conducted since the war. Article 27 of the Chicago Convention is the only one to deal with the

subject of industrial property claims, and it is the focus of the discussion here. In brief, Article 27 parallels Article 5 ter of the Paris Convention for Protection of Industrial Property as amended at The Hague, in that, where applicable, it immunizes aircraft engaged in international commercial aviation as well as their appurtenances from patent claims at the landing state.^{20/}

12. As with Article 5 ter of the Paris Convention as amended at The Hague, there appear to have been no formal international or national interpretations of Article 27, apparently because its terms have been observed without question. Except as noted below, none of the English, French, German, or American commentaries on international air law with which I am familiar (including my own) discusses Article 27 beyond quoting or paraphrasing the text itself. I am advised by the Senior Legal Officer of the International Civil Aviation Organization (ICAO), Mr. Gerald F. Fitzgerald, that the ICAO records show no discussion of the article in the Council or the Assembly of the Organization nor any report of judicial decision in any member country.^{21/} Accordingly, the discussion that follows is limited to a brief summary of the legislative history, plus observations of my own on the text of the article and its context.

13. The first mention of the subject of industrial property at Chicago appears to have come in the Canadian draft of a Convention on International Civil Aviation. Article XXV

^{20/} It is clear from Article 3 of the Chicago Convention that the term "aircraft of a contracting state" as used in Article 27 refers only to civil aircraft, as contrasted with state aircraft. Article 17 of the Chicago Convention makes it clear that "aircraft have the nationality of the State in which they are registered." This is consistent also with the provisions for registration of aircraft nationality in §501 of the Federal Aviation Act of 1958 as amended, 49 U.S.C. §1401.

^{21/} See also the reference to Article 27 in Repertory-Guide to the Convention on International Civil Aviation, ICAO Doc. 8900 (1st Ed. 1971).

of the Canadian draft followed verbatim the text of Article 18 of the Paris Convention on Aerial Navigation of 1919 referred to at Footnote 8 above.

Every aircraft passing through the territory of a member state, including landings and stoppages reasonably necessary for the purpose of such transit, shall be exempt from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security the amount of which in default of amicable agreement shall be fixed with the least possible delay by the competent authority of the place of seizure. ^{22/}

The United States delegation proposed an article relating to the same subject but substantially broader in scope, in that it not only provided for exemption from seizure for foreign aircraft on account of patent claims, but also provided for exemption from the claims themselves. ^{23/} This proposal was referred to Subcommittee 2 of Committee 1, charged with developing air navigation principles, and was discussed in that Subcommittee on November 15 and again on November 30, 1944. ^{24/} The United States proposal was adopted by the Subcommittee on November 30 with minor drafting changes plus a new paragraph (b) relating to spare parts. ^{25/} The draft was submitted first by the Subcommittee as Article 25, ^{26/} and subsequently by the full Committee as Article 27 of the final draft of the Convention. ^{27/} The records of the Conference show no debate on the scope of the article, which was seen throughout as of a piece with other provisions of what became Chapter IV of the Chicago Convention, entitled, "Measures to Facilitate Air Navigation". Thus, Article 27 is consistent,

^{22/} Proceedings of the International Civil Aviation Conference, Chicago, Nov. 1 - Dec. 7, 1944 at 584 (Washington, 1948). Hereafter "Chicago Proceedings."

^{23/} Chicago Conference Doc. 163, Chicago Proceedings at 689-90.

^{24/} Chicago Proceedings, 683-683.

^{25/} See Chicago Proceedings at 1385.

^{26/} Chicago Proceedings at 665.

^{27/} Chicago Proceedings at 625.

for instance, with Article 22 on facilitation of immigration, quarantine, and other formalities; Article 23 on uniformity of customs and immigration procedures, and especially Article 24 exempting from customs duties all aircraft engaged in flight to, from, or across the territory of other contracting states, as well as fuel, spare parts, and aircraft stores of such aircraft.^{28/}

Article 27 reads as follows:

(a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.

(b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.

(c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

^{28/} See to the same effect Bin Cheng, The Law of International Air Transport at 125-26, 129, 136 and 165 (1962).

14. It is clear that Article 27 of the Chicago Convention:

(i) prohibits all seizures or detention of aircraft making authorized transit or landings on the ground of infringement of any patent, design or model granted by or registered in the landing state (paragraph (a));

(ii) precludes all claims against the owner or operator of the aircraft on the same grounds (also paragraph (a)); and

(iii) applies the exemption from seizure or suit on account of patent claims also to spare parts and equipment stored in the landing country and also to the installation of such parts or equipment in making repairs on the aircraft (paragraph (b)).

The obligations in both paragraphs (a) and (b) are reciprocal, in that they are required to be accorded by the contracting states only to other contracting parties of the Chicago Convention. Paragraph (c) of Article 27 further limits the obligation by integrating it into the Paris Convention for the Protection of Industrial Property and any amendment thereof -- a specific reference, it appears, to Article 5 ter as adopted in 1925 at The Hague. The contemplation of the framers of the Chicago Convention was evidently that its members would all be members of the Paris Union for the Protection of Industrial Property, and the draftsmen of the Chicago Convention were careful to do nothing that would in any way undercut protection for international transportation already reserved in the industrial property conventions. However, if countries were not members of the industrial property conventions - for example the Soviet

Union which attended the Chicago Convention but did not sign the Final Act,^{29/} their aircraft could take advantage of the exemption granted by Article 27 of the Chicago Convention only if they adopted satisfactory patent laws giving adequate protection to inventions made by nationals of the Chicago Convention.

Conclusion

15. So far as I am able to discover the present attempt to bring claim for infringement of a patent by aircraft of foreign registry engaged in regular commercial air transportation to and from the patent state is a case of first impression. The reason for this, it appears, is that in every major aviation state three separate legal instruments grant an exemption from local patent laws in these circumstances -- the Industrial Property Convention, the International Civil Aviation Convention,^{30/} and the domestic patent law. This is the situation with all of the countries here relevant -- Japan, the Netherlands, the three Scandinavian countries and the United States. Accordingly, I am clear that regardless of the validity of the patent in question, and regardless of whether the accused engines would infringe that patent if they were made, used or sold in the

^{29/} The Soviet Union joined the Paris Convention in 1965, at the time of its expanding interest in East-West trade; it joined the Chicago Convention in 1970, in the context of the drive against aircraft hijacking.

ordinary commerce of the United States, the use of these engines in the manner described is privileged, and cannot give rise to a claim for infringement.

Andreas F. Lowenfeld
Andreas F. Lowenfeld

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Sworn to before me this
25 day of June, 1974.

Martina L. Edelman

Notary Public

MARTHA L. EDELMAN
Notary Public, State of New York
No. 31-4511689
Qualified in New York County
Commission Expires March 30, 1975

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FISH & EAVE
277 PARK AVENUE, NEW YORK, N. Y. 10017

C O P Y

March 28, 1974

S. Horikoshi, Esq.
Japan Air Lines
655 Fifth Avenue
New York, N.Y. 10022

Re: Call v. JAL et al
Civil Action No. 73 C 1596

Dear Mr. Horikoshi:

In connection with our defense based upon the Convention on International Civil Aviation (copy attached), the Paris Convention (copy attached) and Section 272 of the United States Patent Act (copy attached), I would like to obtain an opinion from an independent attorney in Japan, selected by JAL, on the following points:

1. Does ratification of a treaty (e.g. the Paris Convention as amended by the Act of London 1934, or the Convention on International Civil Aviation (Chicago 1944) by the government of Japan make the treaty a part of the domestic law of Japan which is enforceable in the courts of Japan against private parties?

2. In view of Article 5ter of the Paris Convention as revised at London 1934; Article 27 of the Convention on International Civil Aviation (Chicago 1944), and the domestic law of Japan including Section 69 of the Patents Act. Is it your opinion that the authorized, regularly scheduled visit to Japan of an aircraft registered in the United States equipped with an engine which forms or contains the subject matter of a Japanese patent would not constitute infringement of that patent in an action for patent infringement brought in a Japanese court by the patent owner against the owner or operator of the aircraft?

S. Horikoshi, Esq.

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March 28, 1974

3. Is it your opinion that the Patent laws of Japan treat applicants for patents who are nationals of foreign nations in the same manner that they treat applicants for patents who are nationals of Japan?

The purpose of this opinion is to make it clear that a privilege similar to that granted by Section 272 of the United States Statute to a foreign airline would be granted in a court of Japan to an American airline. This opinion would also support the requirement of Article 27(c)(2) of the Convention on International Civil Aviation that the nation involved has enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other states parties to this convention.

We would appreciate receiving the requested opinions within a period of about two weeks.

Sincerely,

DED:uml
enclosures

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HA" MIKO TANAKA
SE. II TAMAKI
MICHIO NISHI
KAZUHIKO TANAKA
ISAO TAKAHASHI

OF COUNSEL
CHUICHI SUZUKI

TANAKA, TAMAKI & NISHI

ATTORNEYS AND COUNSELLORS AT LAW

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April 4, 1974

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Mr. Y. Yamamoto
Manager, Legal Dept.
Japan Air Lines
Tokyo Bldg.
2-chome Marunouchi
Chiyoda-ku, Tokyo

Re: Cali v. JAL et al.

Dear Mr. Yamamoto:

In connection with the above-referenced litigation you have asked us for our opinion in certain questions of Japanese law, and we are pleased to reply as follows.

1. Ratification of a treaty by the Government of Japan makes the treaty a part of the domestic law of Japan, which is enforceable in the courts of Japan against private parties (Article 98 of the Constitution of Japan).

2. It is our opinion that the authorized, regularly scheduled visit to Japan of an aircraft registered in the United States equipped with an engine that forms or contains the subject matter of a Japanese patent would not constitute infringement of that patent in an action for patent infringement brought in a Japanese court by the patent owner against the owner or operator of the aircraft.

Section 69 of the Patent Law of Japan provides that a Japanese patent cannot be infringed by an aircraft merely "passing through" (tsuuka suru) Japan. There is no judicial authority on the meaning of "passing through", nor has the term been defined by scholars, but scholars are in agreement that the purpose of the provision in question is to prevent interference with international transportation. (K. Yoshifuji, Patent Law, 264. M. Miyake and S. Takura, Industrial Property Right 118) Since this purpose would hardly be achieved if the term "passing through" were interpreted to mean only overflights or emergency landings, we interpret it to include regularly scheduled visits to Japan of foreign registered aircraft.

3. The patent laws of Japan treat applicants for patents who are nationals of foreign nations in the same manner that

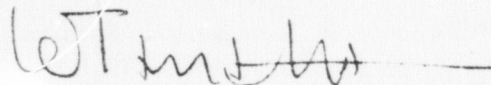
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they treat applicants for patents who are nationals of Japan in case that a country to which the person belongs recognizes for the Japanese nationals the enjoyment of a patent right under the same conditions as those under which the nationals of that country enjoy.

You are hereby authorized to present the above opinion in evidence in the above-referenced litigation or to use it in any other appropriate manner.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'K. Tanaka', followed by a horizontal line.

Kazuhiko Tanaka

KT:yk

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FISH & NEAVE
277 PARK AVENUE, NEW YORK, N. Y. 10017

C O P Y

March 28, 1974

Linus H. Walker, Esq.
KLM Royal Dutch Airlines
609 Fifth Avenue
New York, N.Y. 10017

Re: Call v. KLM et al
Civil Action No. 73 C 1596

Dear Mr. Walker:

In connection with our defense based upon the Convention on International Civil Aviation (copy attached), the Paris Convention (copy attached), and Section 272 of the United States Patent Act (copy attached), I would like to obtain an opinion from an independent attorney in the Netherlands, selected by KLM, on the following points:

1. What orders have the Council of the Realm issued with respect to Section 31 (copy attached) of the Patents Act of the Kingdom of the Netherlands?
2. Does ratification of a treaty (e.g. the Paris Convention as amended by the Act of London 1934, or the Convention on International Civil Aviation (Chicago 1944)) by the government of the Netherlands make the treaty a part of the domestic law of the Netherlands which is enforceable in the courts of the Kingdom of the Netherlands against private parties?
3. In view of Article 5ter of the Paris Convention as revised at London (1934); Article 27 of the Convention on International Civil Aviation (Chicago 1944), and the domestic law of the Netherlands including Section 31 of the Patents Act, is it your opinion that the authorized, regularly scheduled visit to the Netherlands of an aircraft registered in the

Linus H. Walker, Esq.

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March 28, 1974

United States equipped with an engine which forms or contains the subject matter of a Netherlands patent would not constitute infringement of that patent in an action for patent infringement brought in a Netherlands court by the patent owner against the owner or operator of the aircraft?

4. Is it your opinion that the Patent laws of the Netherlands treat applicants for patents who are nationals of foreign nations in the same manner that they treat applicants for patents who are nationals of the Netherlands?

The purpose of this opinion is to make it clear that a privilege similar to that granted by Section 272 of the United States Statute to a foreign airline would be granted in a court of the Netherlands to an American airline. This opinion would also support the requirement of Article 27(c)(2) of the Convention on International Civil Aviation that the nation involved has enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other states parties to this convention.

We would appreciate receiving the requested opinions within a period of about two weeks.

Sincerely,

DED:uml
Enclosures

Mr. W. Blackstone
 Mr. A. C. Rueb
 Mr. E. van 't Hof-Buma
 Mr. C. D. van Boeschoten
 Mr. S. K. Martens
 Mr. T. Schaper
 Mr. E. M. Enschedé
 Mr. H. D. O. Blauw
 Mr. W. Tackema
 Mr. E. D. Wiersma
 Mr. P. C. de Graauw
 Mr. P. A. Wackie Eijsten

Mr. R. M. Schutte
 Mr. Ellen Timmermans
 Mr. H. J. R. Reinders
 Mr. A. N. Huizenga
 Mr. W. A. Hoyng
 Mr. Dymphna M. C. Schuurmans

Advocaten

Koninginnegracht 27, 's-Gravenhage. Telefoon 070 - 624361*

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 Abg. Bank Ned. [bankgiro 51.36.15.512],
 Pierson, Helling & Pierson [bankgiro 24.80.29.878.0]

Mr. Donald E. Degling
 Fish & Neave
 277 Park Avenue
New York, N.Y. 10017
 U.S.A.

's-Gravenhage, April 11, 1974

Dear Colleague,

Re : Cali v. K.L.M. et al.

Civil Action No. 73 C 1596

Mr. H.S.R.J. toe Laer of K.L.M. has asked me to answer the questions 1 through 4 in your letter of March 28, 1974 in the above case, and to send my answer directly to you.

Ad 1. The order issued under Section 31 of the Patents Act of the Kingdom of the Netherlands is Chapter III of the "Octrooiereglement" ("Patent Rules"), of which Article 40 deals with means of conveyance. (I have the impression that you have a translation of this Article 40 into English at your disposal; if not, please let me know.)

Ad 2. Ratification of a treaty by the government of the Netherlands makes the treaty a part of the domestic law of the Netherlands. According to Section 65 of the Consitution of the Kingdom of the Netherlands provisions of treaties which have been duly published are enforceable against private parties, if "according to their contents" these provisions "can bind everybody".

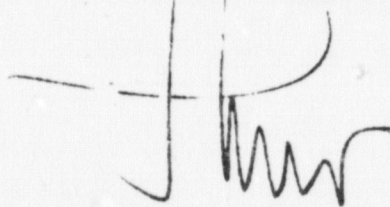
Application of this criterion to Article 5 ter of the Paris Convention (as revised at London, 1934) and Article 27 of the Convention of Chicago (1944) leads, in my opinion, to the conclusion that both Articles are enforceable in the courts of the Kingdom of the Netherlands against private parties.

Ad 3. The answer to your third question is : yes.

Ad 4. The answer to your fourth question is also : yes (and it is not only "yes" as to "applicants of patents" but also as to patent owners).

I hope my above answers are sufficient for your purposes; if not, do not hesitate to ask further elucidation.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'T. Schaper', with a stylized, cursive script.

T. Schaper.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., INC.

and

SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.

and

KLM ROYAL DUTCH AIRLINES,

Defendants.
-----x

Civil Action No.

73 C 1596 (JFD)

NOTICE OF MOTION

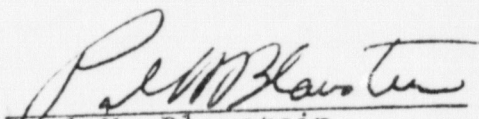
S I R S:

Please take notice that on Thursday, August 8, 1974
at 4:30 P.M., Plaintiff (Cali) will move this Court:

I. In connection with the Chicago Convention, for an Order for Partial Summary Judgment dismissing and striking paragraphs 19G (a) through (e) of the Amended Answer of Japan Airlines Company; paragraph 16 of the Amended Answer of Defendant Scandinavian Airlines System and Scandinavian Airlines System, Inc.; and paragraph 56E (a) through (e) of the Answer of Defendant KLM Royal Dutch Airlines on the grounds that the Convention on International Civil Aviation, Article 27 [Chicago Convention] upon which such defenses are based is unconstitutional as it deprives the Plaintiff inventor of of his Constitutional rights to the exclusive use of his invention granted pursuant to Article 1, § 8 of the U.S. Constitution without due process of law or without just compensation. This Motion is further based on the grounds that said Article 27 must be construed as subsidiary to or negated by the "Convention for the Protection of Industrial Property" [Paris Convention] Article 5 (ter, ¶ 2) adopted January

1963 and 35 U.S.C. 272.

II. In connection with the Paris Convention and 35 U.S.C. 272, for an Order for Partial Summary Judgment dismissing and striking paragraphs 19E and 19F of the Answer and Amended Answer of Japan Airlines; paragraphs 15 and 17 of the Answer and Amended Answer of Scandinavian Airline Systems and Scandinavian Airlines Systems, Inc.; and paragraphs 56C and 56D of the Answer and Amended Answer of KLM Royal Dutch Airlines on the grounds that no issue of fact is presented and further on the grounds as a matter of law, each Defendants' use of the patented invention is not privileged under 35 U.S.C. 272 or under the Treaties or Conventions applicable, referred to herein as the Paris Convention for the Protection of Industrial Property, and that to construe each of Defendants' uses not to be infringement would be unconstitutional and deprive Plaintiff Cali of his exclusive right under the Constitution of the United States without just compensation, is a violation of due process of law and deprives the inventor of the equal protection of the laws, under Amendment 5 and 14 of the U.S. Constitution.


Paul H. Blaustein
Attorney for Plaintiff
Sandoe, Hopgood & Calimafde
60 East 42nd Street
New York, New York 10017

Dated: July 1, 1974
New York, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY J. CALI,

Plaintiff, :

-against- : 73 C 1596

JAPAN AIRLINES CO., LTD., : CONFERENCE MEMORANDUM
and : and ORDER
SCANDINAVIAN AIRLINES SYSTEM & :
SCANDINAVIAN AIRLINES SYSTEM, INC., :
and KLM ROYAL DUTCH AIRLINES, :

Defendants. :

----- X

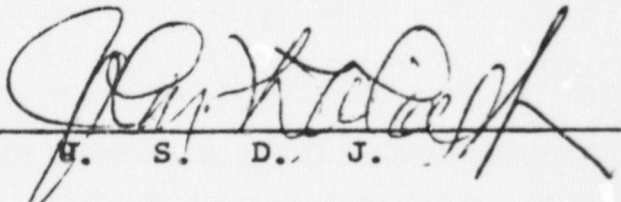
The pleadings have now been so amended as to bring squarely in issue the defenses asserted under 35 U.S.C. § 272, Article 5ter of the Paris Convention and Article 27 of the Chicago Convention. For present purposes, it seems that the Paris Convention and Section 272 have about the same effect and limitations, and that the Chicago Convention, in Article 27, using different phraseology, may well extend to situations not covered by Section 272 or the Paris Convention, and that it would be defendant's reliance if it were concluded that the kind of use of the invention here involved was not embraced in either Section 272 or the closely parallel Paris Convention because of their language and history. Plaintiff contends that the Chicago Convention is constitutionally invalid as taking property without compen-

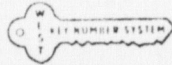
sation and as inconsistent with and controlled by the Paris Convention and Section 272.

All agree that if any issues of fact are present it would be wise to try them separately and first since the immunity-of-use issue, all agree, is a threshold issue. Plaintiff, however, has raised the point of Section 27's constitutionality, and that appears to be a point that can be disposed of without the necessity for any trial. Accordingly, it is understood that the plaintiff will brief his motion filed June 28th and dated June 19th, defendants will reply, and the motion will be argued. If the decision on it is not dispositive of the immunity-of-use defenses, then, assuming that the issues of fact have not been cleared up, a trial of the issues of fact on the preliminary issue framed through the defenses will be had. The schedule is as follows: on the motion addressed to Article 27, plaintiff's brief is due July 15, 1974; defendant's brief is due July 30, 1974, plaintiff's reply is due August 6, 1974, and the motion will be argued August 8, 1974. If the preliminary trial is necessary it will take place in the week of September 30, 1974.

It is so ORDERED.
Brooklyn, New York

July 3, 1974.


U. S. D. J.



Anthony J. CALI, Plaintiff,

v.

JAPAN AIRLINES, INC., et al.,
Defendants.

No. 73 C 1596.

United States District Court,
E. D. New York.

Aug. 20, 1974.

Suit charging international air carriers, which were air carriers of their respective national states, with infringing United States patent relating to modification introduced into JT-4 jet engines. Plaintiff moved for summary judgment in substance striking defenses based on patent statute and on Article 5ter of the Paris Convention for the Protection of Industrial Property of 1958 and Article 27 of the Chicago Convention on International Civil Aviation of 1944, to both of which conventions the respective national states were parties. The District Court, Dooling, J., held that constitutional provision empowering Congress to issue patents is not self-executing, that patent law must not be interpreted to abridge the nation's capacity to carry on its treaty-making powers and its power to regulate foreign commerce, that substantiality in subtractions of use from exclusiveness of grant of a patent is within the treaty-making power, that defendant's use of the modified JT-4 jet engine in regular transoceanic passenger and freight

service to and from the United States fell within the protection from infringement afforded by statute and Conventions, notwithstanding use of words "temporary" and "accidental" in statute and the Paris Convention.

Motion denied.

1. Patents ⇨3

Constitutional provision empowering Congress to promote progress of science and useful arts by securing for limited times to inventors the exclusive right to their respective discoveries is not self-executing; it empowers but does not command Congress to grant patent rights; source of any specific patent right is the statute which defines the nature and extent of the patent right granted. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

2. Commerce ⇨1

Patents ⇨2

Treaties ⇨2

Power to regulate commerce and the treaty-making powers are separate and distinct powers of the general government and are not connected with the power, domestic in its character, to promote the progress of science by securing to inventors for a limited time the exclusive right to their discoveries. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

3. Patents ⇨189

Patent laws are not intended to have extraterritorial operation. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

4. Commerce ⇨53

Patents ⇨3

Treaties ⇨2

Patent law must not be so interpreted as to impair the treaty-making capacity of the nation or to clog its power to regulate foreign commerce since that would make patent grants a surrender pro tanto of sovereignty to private persons. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

5. Patents ⇨181

Unless the language of the patent statute plainly compels it, the statute must not be taken to grant rights in terms so broad that existing or later treaties must necessarily constitute a "taking" of some part of the patentee's grant. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

6. Patents ⇨260

Word "temporarily" within statute providing that use of any invention in an aircraft entering the United States temporarily shall not constitute patent infringement and comparable provisions of the Paris Convention for the Protection of Industrial Property of 1958 does not mean any less than entrance for the purpose of completing a voyage, turning about, and continuing or commencing a new voyage. 35 U.S.C.A. § 272.

See publication Words and Phrases for other judicial constructions and definitions.

7. Patents ⇨328(2)

Patent No. 3,265,290, which relates to modification introduced into JT-4 jet engines, was not infringed by regular use of patented engine in air service to the United States by transoceanic commercial air carriers, which were air carriers of their national states; use of engines in regular international service to the United States did not put carriers outside scope of protection from infringement claims afforded by Article 5ter of the Paris Convention for the protection of Industrial Property of 1958, Article 27 of the Chicago Convention on International Civil Aviation of 1944 or patent statute governing temporary presence in United States of foreign aircraft using patented inventions. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154, 272.

8. Patents ⇨189

Substantiality in the subtraction of use from the exclusiveness of the grant of a patent governing an invention applicable to an aircraft is within the treaty-making power; such substantial subtraction falls within scope of the

Paris Convention for Protection of Industrial Property of 1958, the Chicago Convention on International Civil Aviation of 1944 and similar patent statutes, notwithstanding use of word such as "temporary" and "accidental" when referring to entry into the United States; also, such subtraction is not limited to patent rights that are without commercial significance. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154, 272.

9. United States ⚡97

Once the United States has granted a patent under existing patent law, it is itself required to pay tribute to the patentee if it uses the patent; however, the government can take, by condemnation, a license under the patent if required for a public use. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154.

10. Patents ⚡258

Implicit in grant of a patent is the right to limit infringement claims in connection with use of an invention in foreign commerce; provisions of international conventions and treaties limiting infringement claims as regards the use of an invention in vehicles of foreign commerce are integral limitations on grant of a patent for such inventions. U.S.C.A.Const. art. 1, § 8, cl. 8; 35 U.S.C.A. §§ 101, 154, 272.

Paul H. Blaustein, New York City (Sandoe, Hopgood & Calimafde, New York City, of counsel), for plaintiff.

Donald E. Degling, New York City (Fish & Neave and James M. Estabrook, Jr., New York City, of counsel), for defendants Japan Airlines Co. Ltd., and KLM Royal Dutch Airlines.

Louis H. Kurrelmeyer, New York City (Hale Russell & Stentzel, Alan D. Sugarman, New York City, of counsel), for defendants Scandinavian Airlines System and Scandinavian System, Inc.

MEMORANDUM and ORDER

DOOLING, District Judge.

The claims of the Cali patent (No. 3,265,290) relate to a modification intro-

duced into JT-4 jet engines in which the seventh stage vane and shroud assembly of the low pressure compressor is affixed to the fairing by welding or by tie-rods. The plaintiff alleges that the defendant international air carriers have infringed the patent by using JT-4 engines so modified in their flights to and from the United States and their overflights of the United States in the course of the regular prosecution of their scheduled air services to this country. It is not claimed that any defendants either made or sold any engines covered by the claims of the patent in the United States. It is claimed that they have regularly used the patent within this country in their regular air services to this country. Plaintiff points out, and it is undeniable, that all three defendants are major transoceanic carriers and that their passenger and freight services to the United States and over the United States are regular, of very considerable extent, long continued, and supported by ground service, marketing facilities, etc. Defendants' uses of the engines have been exclusively for the flight needs of their aircraft, and all three defendant carriers are foreign carriers and are subject to the restrictions of law applicable in this country to foreign carriers. All three are authorized by the CAB to conduct the air services to and from the United States which they are conducting and, in that sense, the entries of their aircraft into the United States are authorized entries. The defendant aircraft are "aircraft of other countries," and are "aircraft of" their respective national states.

The defendants contend (without conceding that the patent is valid or has been infringed) that, even if the patent is valid and the engines used in certain of their aircraft would be infringing engines if made or sold or used in the United States, their use of the invention of the patent in their aircraft does not constitute infringement of the patent because of the provisions of 35 U.S.C. § 272 and the provisions of Article 5ter of the Paris Convention for the Protection of Industrial Property of 1958, which

CALI v. JAPAN AIRLINES, INC.

Cite as 380 F.Supp. 1120 (1974)

1123

came into force for the United States on January 4, 1962, and of Article 27 of the Chicago Convention on International Civil Aviation of 1944, which came into force for the United States April 4, 1947, to both of which conventions the United States, Denmark, Norway, Sweden, Japan and The Netherlands became and are parties.

Section 272 of the patent law first appeared in the codification of July 19, 1952 (66 Stat. 812). So far as relevant it provides:

"The use of any invention in any aircraft . . . of any country which affords similar privileges to . . . aircraft . . . of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the . . . aircraft . . . and is not sold in or used for the manufacture of anything to be sold in or exported from the United States."

Article 5ter of the Paris Convention is very similar in language. It provides:

"In each of the countries of the Union the following shall not be considered as infringement of the rights of a patentee:

* * * * *

2. The use of devices forming the subject of the patent in the construction or operation of aircraft . . . of other countries of the Union, or of accessories to such aircraft . . . when those aircraft . . . temporarily or accidentally enter the country."

The Chicago Convention on International Civil Aviation, at least in form, seems much more inclusive in defining the exempted uses, although its language presents some difficulty. It provides in Article 27:

"(a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across

the territory of such State with or without landing shall not entail . . . any claim against the owner or operator thereof . . . by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent . . . duly granted . . . in the State whose territory is entered by the aircraft . . .

* * * * *

"(c) The benefits of this Article shall apply only to such States parties to this Convention, as either (1) are parties to the International Convention for the protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention."

The United States, Denmark, Norway, Sweden, Japan and The Netherlands are all parties to the Convention referred to and hence Article 27 applies to them.

Plaintiff emphasizes that Article I, Section 8 of the Constitution empowers the Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to . . . Inventors the exclusive Right to their respective . . . Discoveries.", that 35 U.S.C. § 101 accords the inventor or discoverer of "any new and useful . . . machine . . . or any new and useful improvement thereof" the right to obtain a patent upon it, and that 35 U.S.C. § 154 provides that

"Every patent shall contain . . . a grant to the patentee . . . for the term of seventeen years, of the right to exclude others from making, using, or selling the invention throughout the United States . . ."

Plaintiff argues that if an invention is patentable, the Government is constitutionally precluded from according the inventor anything less than the exclusive

grant described in the Constitution and provided for in Section 154. Plaintiff argues that, in consequence, there can be no exception from the patent grant of foreign air carriers' regular and extensive uses of patentable inventions in the United States even if their uses are wholly confined to the needs of international air navigation, since that would make the patent grants non-exclusive, and the Congress has neither the power, constitutionally, so to limit patent grants nor has it done so in Section 154. Article 27 of the Chicago Convention is, therefore, plaintiff argues, invalid since it plainly licenses a very wide area of use, creates a wide rift of non-exclusivity in every patent covering articles incorporated in aircraft and needed in their navigation. Further, Plaintiff argues, Section 272, was first enacted after the Chicago Convention last came into effect and, enacted in far narrower terms, must be considered to have superseded Article 27 or, if not, at least greatly to have narrowed its field of application; and plaintiff contends, the same must be said of the Paris Convention, most recently amended and reconfirmed in 1962. Finally, Plaintiff argues, Section 272 itself (and Article 5ter of the Paris Convention), which relates only to foreign aircraft "temporarily or accidentally entering" this country, cannot be taken to cover the maintenance of a regular and systematic international aircraft service to the United States, including overflights of it.

It is concluded that the statute, Section 272, and the Paris Convention, Article 5ter, cannot be so narrowly interpreted as plaintiff contends, and that Article 27 of the Chicago Convention, Article 5ter, of the Paris Convention, and Section 272, are constitutionally valid as applied to the defendants' uses of plaintiff's patented engines, and, therefore, accord defendants a complete defense to the claims against them for patent infringement.

[1] The constitutional provision is not self-executing. It empowers but does not command the Congress to grant

patent rights, and the source of any specific patent right is the statute which defines the nature and extent of the patent right granted. See *Deepsouth Packing Co. v. Laitram Corp.*, 1972, 406 U.S. 518, 525-526, 92 S.Ct. 1700, 32 L.Ed.2d 273. In *Mast, Foos & Co. v. Stover Mfg. Co.*, 1900, 177 U.S. 485, 494, 20 S.Ct. 708, 712, 44 L.Ed. 856, the court observed sharply

"Congress having created the monopoly, may put such limitations upon it as it pleases."

Brown v. Duchesne, 1857, 60 U.S. (19 How.) 183, 15 L.Ed. 595 underlies Section 272. In that case, plaintiff sued defendant for infringing plaintiff's patent on a construction in a gaff for sailing vessels, charging that defendant had used the gaff improvement at Boston without consent. Defendant pleaded that he used the improvement only in the gaffs of a French schooner of which he was the master, being himself a subject of France, the vessel being one built in France and owned and manned by French subjects, and, at the time of the alleged infringement, upon a lawful journey under the flag of France from a colony of France to Boston and back to the colony, that the voyage was not ended on the date of the alleged infringement and that the gaffs were placed on the schooner at or near the time of her launching by the builder in order to fit her for the sea. The patentee demurred to the defense, and the Court treated the case as presenting the question whether any improvement in the construction or equipment of the foreign vessel on which there was a United States patent could be used by the vessel within the United States "while she is temporarily there for the purpose of commerce, without the consent of the patentee." 60 U.S. (19 How.) at 194.

[2, 3] The language of the patent laws, the Court agreed, was clear enough, if read literally, to apply to the use of the gaff improvement involved in the case. However, the Court thought that the power granted to the Congress to pass patent and copyright laws con-

ferred "no power on Congress to regulate commerce, or the vehicles of commerce, which belong to a foreign nation, and occasionally visit our ports in their commercial pursuits." 60 U.S. (19 How.) at 195. The power to regulate commerce and the treaty making power are separate and distinct powers of the general government and not connected with the power "domestic in its character" (*Id.*) to promote the progress of science by securing to inventors for a limited time the exclusive right to their discoveries. The patent laws are not intended to have extraterritorial operation. The Court differentiated between a profitable use of a patent, as by manufacturing gaffs in Boston and selling them there and the trifling use of the gaff improvement made by the French schooner in simply coming into port and ceasing to use the gaff when the vessel came to dockside. In this the Court saw no "real damage" sustained by the plaintiff, and no advantage gained by the defendant in the schooner's single trip or occasional trips into the United States. Although damage was presumed for purposes of maintaining an action in such cases, the Court noted, the patent laws do not embrace improvements on foreign ships lawfully made in their own country, for so to view the patent law would be to confer on the patentee the power to exact damages where no real damages had been sustained, and where to do so would seriously embarrass the commerce of the country with foreign nations. Further, such a construction, as the patentee called for, "would confer on patentees not only rights of property, but also political power, and enable them to embarrass the treaty-making power in its negotiations with foreign nations, and also to interfere with the legislation of Congress when exercising its constitutional power to regulate commerce." 60 U.S. (19 How.) at 197. The Court noted further that if the law was so interpreted, then the rights of the patentee could not be put aside by any treaty entered into by the United States. *Id.*

Brown v. Duchesne rejected the holding of an English case, which had reached a precisely opposite result; the English case was apparently promptly followed by the enactment of a statute, in 1852, providing that future patents should not extend to prevent the use of the invention in any foreign ship or for the navigation of any foreign ship in British ports, if the invention was not used for the manufacture of articles to be vended within or exported from Britain, provided that the new enactment's benefit should not extend to ships of any foreign state that failed to extend a similar benefit to British ships.

It will be seen that *Brown v. Duchesne* is to some extent the source of the ideas and language in Section 272, and that, independent of the existence of Section 272, the approach of *Brown v. Duchesne* to the problem approximated the British statutory solution.

The United States entered into the Paris Convention for the Protection of Industrial Property long before Section 272 was enacted in 1952. Article 5ter, in the 1925 and 1934 versions of the Paris Convention, if not in earlier ones, covered both vessels and air and land engines. The 1934 article provided that the use of any article forming the subject matter of a patent in the construction or operation of air or land locomotive engines of the other countries of the Union, or of accessories to these engines, when the latter enter the country temporarily or accidentally, should not be considered as infringing the rights of a patentee in any of the countries of the Union. The revisers note to Section 272 indicates that the Section was intended to follow the "requirement" of the Paris Convention to which the United States was a party, and that it also clarified the holding of the Supreme Court "that use of a patented invention on board a foreign ship does not infringe a patent."

[4,5] Although the Court might phrase it differently today, *Brown v. Duchesne* means at minimum that the patent law must not be so interpreted as

to impair the treaty-making capacity of the nation or to clog its power to regulate foreign commerce (since that would make patent grants a surrender *pro tanto* of "sovereignty" to private persons, cf. *Norman v. Baltimore & O. R. Co.*, 1935, 294 U.S. 240, 316, 55 S.Ct. 407, 79 L.Ed. 885; *Home Building & Loan Ass'n v. Blaisdell*, 1934, 290 U.S. 398, 442-444, 54 S.Ct. 231, 78 L.Ed. 413), and that, hence, unless the language of the patent statute plainly compels it, the statute must not be taken to grant rights in terms so broad that existing or later treaties must necessarily constitute a "taking" of some part of the patentee's grant. The Court emphasized the "no damage" aspect in reaching its conclusion, but that does not mean that the Court was holding that only trivial uses could be considered non-infringing uses. The grant of the patent then, as now, granted the patentee the right to exclude others from making, using, or selling the article of the patent; the Court was dealing with an article made in France, sold in France and used in transoceanic travel and, finally, used to make and leave port on a voyage to the United States. The shipowner's significant uses of the art of the gaff patent were foreign to the United States, although the gaff was presumably indispensable for making and leaving port. Such a use within the United States would not, perhaps, today be characterized as trivial and non-damaging since it was inevitable and necessary, but it was not in fact different in kind and use-value from a foreign-owned aircraft's use of the Cali patent in one or more of its engines to land, turn about and take off.

In any event, the United States has in substance so interpreted its own patent laws in unhesitatingly becoming a party to the Paris Convention and the Chicago Convention, both of which specifically deal with the very subject matter of *Brown v. Duchesne* and Section 272, and do so in an historical evolution which furnishes an insight into the meaning of the word "temporarily" as used in the

phrase "entering the United States temporarily or accidentally." Counsel have cited a passage from the record of the proceedings at the Hague Conference indicating that in a committee meeting in connection with the 1925 consideration of Article 5ter, subparagraph 2, the question of the significance of "temporarily" was brought up for discussion; the committee indicated that the words "temporarily" and "accidentally" were chosen to cover entries into port for more or less brief periods whether periodically or exceptionally and whether unintentionally or not.

[6] The enactment of Section 272 and the adoption of Article 5ter would be incomprehensible if they were intended to cover only trivia. Their adoption implies that they were understood to create a useful immunity from infringement liability that was of enough importance to occupy the attention of the Congress and the negotiators of two treaties. Their language was chosen to deal with an internationally significant matter arising in a world in which scheduled freight and passenger services by established international carriers by air and sea were likely to require such an immunity to cover countless articles aboard aircraft or vessels that could turn out to be covered by patents in the United States that were without counterpart abroad. It is difficult to see any other purpose in Section 272 and Article 5ter than to meet the needs and realities of international trade and navigation. "Temporarily," then, could not sensibly mean any less than entering for the purpose of completing a voyage, turning about, and continuing or commencing a new voyage. The distinction would be between a Caravelle, manufactured in France and powered with such an engine, delivered here for use by an airline in this country for domestic traffic, even though manufactured and sold in France, and a foreign aircraft arriving here on an international flight only to unload, turn about, reload and depart.

But if that interpretation of Section 272 and Article 5ter were doubtful, the interpretation of Article 27 of the Chicago Convention is far too clear to debate and it is not, it is understood, claimed that Article 27 of the Chicago Convention is not literally sufficient to accord the defendant airlines a defense if it is valid. It is suggested that it is invalid simply because it is broader than *Brown v. Duchesne*, Section 272 and Article 5ter which may be taken among them to mark the constitutional limit of what may be subtracted from the grant to the patentee of the right to exclude all others from the use of his patent, and, in the case of the 1958 amendment and repromulgation of the Paris Convention, may be even taken as impliedly reducing the scope of any broader immunity that might be thought to have been granted by Article 27. However, the statute, including Section 272, and the two treaties are not inconsistent one with the other. For example, Article 27 says nothing about accidental entries (which might well not be authorized entries). But even if that were not so, the co-existence of the two treaty provisions is understandable and does not argue an inconsistency. The Paris Convention is not limited to aircraft or vessels or temporary or accidental entries. It covers the whole field of the Protection of Industrial Property "understood in the broadest sense" and it applies "not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products" (Article 1 of the Paris Convention). The Chicago Convention is devoted to International Civil Aviation and not to the Protection of Industrial Property Rights; it deals with the facilitation of international aviation and the elimination of blocks and clogs to it. The two subjects intersect at the point where each considers patents used in international navigation by carriers foreign to the patent-granting country, and caution suggests that both treaties deal with the subject so that no argu-

ment could ever be made that one treaty, by failing to deal with it, impliedly repealed a provision in an earlier treaty.

[7,8] It does not quite appear to be argued that the defendants and their aircraft are not "of" foreign countries or national states within the potential scope of Section 272 and Articles 5ter and 27. The argument seems rather to be that the particular airlines involved, given the magnitude of their carrier operations between foreign countries and this country, are such that the airlines are comparable to American airlines in the extent of their use of the article of Cali's patent, and that, in consequence, the subtraction from the grant to Cali of the right to exclude others from the use of his patent is a very great subtraction and one hardly tolerable under the statutory and treaty language, which might be thought to deal only with relatively unimportant ("temporary" and "accidental") invasions of the patent right that are without commercial significance. That subtraction, although large, appears nevertheless plainly to be what the statutory and treaty immunities intend; substantiality in the subtractions of use from the exclusiveness of the grant of such patents as that to Cali, while not unreal, is within the treaty-making power. The foreign carriers' use is, in fact, not comparable to domestic airline use of the patent right; the sharply delimiting functional language greatly narrows the tolerated use.

[9,10] It is suggested that a treaty diluting the exclusivity of the grant to Cali has to be regarded as, in essence, a governmental "taking." It is pointed out—and it is true—that once the United States has granted a patent under the existing patent law, it is itself required to pay tribute to the patentee if it uses the patent: as the government, it can take by condemnation a license under the patent (in effect) if required for a public use. But plaintiff's argument is circular when used to equate an exercise of the treaty-making power, or of the

power to amend the patent statute, as a "taking" of patents not granted until after the treaty has been made or the statute amended. It starts from the premise that the nation's enactment of a general statute authorizing the grant to patentees of the right to exclude others from the making, selling and using of an article or process, excludes the United States from reserving the power by treaty or law to create, as it were, royalty free licenses under future-granted patents to foreign carriers to the limited extent spelled out in Section 272, Article 5ter and Article 27. The argument, thus, assumes that the rights of all patentees generally are paramount to the government's legislative power and its power to grant treaty rights to international carriers under American patents. Whatever might have been the case as to patents granted before *Brown v. Duchesne*, it has not been the case as to patents granted since the expiration of the patents then extant. All such later patents have *Brown v. Duchesne* read into them. The patent to Cali was granted in 1966, after Section 272 had been passed and after Articles 5ter and 27 had been included in the two Conventions here directly involved. They were integral limitations on the grant. The enactment of the patent law under the constitutional provision simply was not a compact with all future inventors never to make such treaties as the Paris and Chicago Conventions and never to add a Section 272 to the patent laws. That is what *Brown v. Duchesne* decided in pointing out that the patent law must not be interpreted to abridge the nation's capacity to carry on its treaty-making powers and its power to regulate foreign commerce.

It follows that plaintiff's motion for summary judgment in substance striking the defenses based on Section 272 and on Article 5ter of the Paris Convention and Article 27 of the Chicago Convention must be in all respects denied.

It is so ordered.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendants.
-----x

Civil Action No.

73 C 1596 (JFD)

PLAINTIFF'S ANSWERS TO DEFENDANTS' SECOND
INTERROGATORIES DIRECTED TO PLAINTIFF CALI

INTERROGATORY 2

2. A. Does Plaintiff contend that any aircraft operated by JAL which entered the United States during the relevant period was registered in a country other than the country of Japan?

B. If the answer to Interrogatory 2A is yes, state the facts known to Plaintiff upon which the answer is based.

C. If the answer to Interrogatory 2A is yes, state the country in which Plaintiff contends the aircraft operated by JAL were registered.

ANSWER: No.

INTERROGATORY 3

3. A. Does Plaintiff contend that any aircraft operated by KLM which entered the United States during the relevant period was registered in a country other than the country of the Netherlands?

B. If the answer to Interrogatory 3A is yes, state the facts known to Plaintiff upon which the answer is based.

C. If the answer to Interrogatory 3A is yes, state the country in which Plaintiff contends the aircraft operated by KLM were registered.

ANSWER: No.

INTERROGATORY 4

4. A. Does Plaintiff contend that SAS, Inc. owned or operated aircraft within the United States during the relevant period?

ANSWER: Plaintiff contends that SAS, Inc. did not own aircraft but operated aircraft as general agent of SAS and was the alter ego of SAS and controlled or directed, indirectly or directly, and was responsible, directly or indirectly, for the scheduling, operating and entering of aircraft into and out of the United States.

B. If the answer to Interrogatory 4A is yes, state the facts known to Plaintiff upon which the answer is based.

ANSWER: See above.

C. If the answer to Interrogatory 4A is yes, does Plaintiff contend that such aircraft were not registered in one of the countries of Denmark, Norway or Sweden?

ANSWER: No.

D. In the answer to Interrogatory 4A is yes, does Plaintiff contend that such aircraft were not engaged in international air navigation?

ANSWER: No.

E. If the answer to Interrogatory 4A is yes, does Plaintiff contend that the entry of such aircraft into the United States was not authorized by the Civil Aeronautics Board?

ANSWER: No.

INTERROGATORY 5

5. A. Does Plaintiff contend that during the relevant period JAL:

(1) Sold internally in the United States the accused JT-4A engines incorporating the alleged invention?

(2) Made the accused JT-4 engines or any portion thereof incorporating the alleged invention in the United States?

(3) Exported commercially the accused JT-4A engines incorporating the alleged invention from the United States, or used such engines for the manufacture or anything to be sold in or exported from the United States?

B. (1) If the answer to A(1) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so made.

(2) If the answer to A(2) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so made.

(3) Of the answer to A(3) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so exported or used.

ANSWER: No.

INTERROGATORY 6

6. A. Does Plaintiff contend that during the relevant period KLM:

(1) Sold internally in the United States the accused JT-4A engines incorporating the alleged invention?

(2) Made the accused engines or any portion thereof incorporating the alleged invention from the United States?

(3) Exported commercially the accused JT-4A engines incorporating the alleged invention from the United States, or used such engines for the manufacture of anything to be sold in or exported from the United States?

B. (1) If the answer to A(1) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so sold.

(2) If the answer to A(2) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so made.

(3) If the answer to A(3) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so exported or used.

ANSWER: No.

INTERROGATORY 7

7. A. Does Plaintiff contend that during the relevant period SAS:

(1) Sold internally in the United States the accused JT-4A engines incorporating the alleged invention?

(2) Made the accused JT-4A engines or any portion thereof incorporating the alleged invention in the United States?

(3) Exported commercially the accused JT-4A engines incorporating the alleged invention from the United States, or used such engines for the manufacture of anything to be sold in or exported from the United States?

ANSWER: Except in connection with sales of aircraft embodying the JT-4A engines, which documents are to be produced by defendant, plaintiff does not so contend.

B. (1) If the answer to A(1) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so sold.

(2) If the answer to A(2) is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so made.

(3) If the answer to A(3) is yes, state the facts upon which the contentions are based and specify the serial number of the engines so exported or used.

ANSWER: These interrogatories will be answered after defendants have produced the requested documents.

INTERROGATORY 8

8. Does Plaintiff contend that JAL during the relevant period used JT-4A engines in the United States other than exclusively for the needs of aircraft operated by JAL? If so, state the facts upon which the contention is based.

ANSWER: Except for engines which were used in the JT-4 Engine Pool, plaintiff does not so contend.

9. Does Plaintiff contend that KLM during the relevant period used JT-4A engines in the United States other than exclusively for the needs of aircraft operated by KLM? If so, state the facts upon which the contention is based.

ANSWER: Except for engines which were used in the JT-4 Engine Pool, plaintiff does not so contend.

INTERROGATORY 10

10. Does Plaintiff contend that SAS during the relevant period used JT-4A engines in the United States other than exclusively for the needs of aircraft operated by SAS? If so, state the facts upon which the contention is based.

ANSWER: Except for engines which were used in the JT-4 Engine Pool, plaintiff does not so contend.

INTERROGATORY 11

11. Does Plaintiff contend that JAL is not a corporation created and organized under the laws of Japan: If so, state the facts upon which the contention is based.

ANSWER: No.

INTERROGATORY 12

12. Does Plaintiff contend that KLM is not a corporation created and organized under the laws of the Netherlands? If so, state the facts upon which the contention is based.

ANSWER: No.

INTERROGATORY 13

13. Does Plaintiff contend that any of defendant airlines maintain engine overhaul or repair facilities within the United States or its possessions or store aircraft engines or major parts for aircraft engines within the United States or its possessions? If so, state the facts upon which the contention is based.

ANSWER: Yes. The defendants have admitted to having repair premises in the United States; but, however, no contention has been made that any JT-4 engines has been overhauled in the United States to include the Cali invention.

INTERROGATORY 14

14. Does Plaintiff contend that KLM's ownership of JT-4A engines in connection with KLM's operation of a JT-4A engine pool was in the United States? If so, state the facts upon which the contention is based.

ANSWER: Objection is made to this interrogatory as argumentative.

INTERROGATORY 15

15. Does Plaintiff contend that during the relevant period, any aircraft (other than KLM aircraft) incorporating a JT-4A engine was flown in the United States by an airline member of the JT-4A engine pool operated by KLM in the Netherlands.

ANSWER: No.

A. If the answer to Interrogatory 15 is yes, state:

- (1) the facts upon which the answer is based, and,
- (2) whether Plaintiff contends that such aircraft were not engaged in international air navigation, and
- (3) whether Plaintiff contends that such aircraft were not registered in a country other than the United States, and,
- (4) whether Plaintiff contends that the operation of such aircraft in the United States was not authorized by the CAB, and
- (5) whether Plaintiff contends that such aircraft were aircraft of the United States.

ANSWER: No.

INTERROGATORY 16

16. Does Plaintiff contend that during the relevant period, any aircraft (other than SAS aircraft) incorporating a JT-4A engine was flown in the United States by an airline member of the JT-4A engine pool operating by SAS or SAS, Inc.

A. If the answer to Interrogatory 16 is yes, state:

- (1) the facts upon which the answer is based, and,
- (2) whether Plaintiff contends that such aircraft were not engaged in international air navigation, and
- (3) whether Plaintiff contends that such aircraft were not registered in a country other than the United States, and,
- (4) whether Plaintiff contends that the operation of such aircraft in the United States was not authorized by the CAB, and,
- (5) whether Plaintiff contends that such aircraft were aircraft of the United States.

ANSWER: No.

INTERROGATORY 17

17. Does Plaintiff contend that during the relevant period any of the JT-4A engines sold by defendant airlines were sold in the United States?

A. If the answer to Interrogatory 17 is yes, state the facts upon which the answer is based and identify the vendee of such engines and the date of such sale.

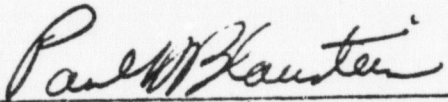
ANSWER: This interrogatory will be answered after defendants have produced the requested documents.

INTERROGATORY 18

18. Does Plaintiff contend that defendant airlines conducted aircraft operations in the United States other than operations under their respective foreign air carrier permits and amendments thereto?

A. If the answer to Interrogatory 18 is yes, identify such operations, the date and the place of their occurrence and state whether such operations involve the use of JT-4A engines.

ANSWER: Plaintiff does not contend that the defendants conducted scheduled flights other than in accord with the foreign air carrier permits.

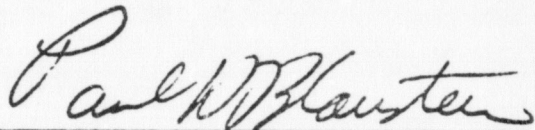

Paul H. Blaustein
Attorney for Plaintiff
Hopgood, Calimafde, Kalil,
Blaustein & Lieberman
60 East 42nd Street
New York, New York 10017
(212) 986-2480

DATED: October 8, 1974

VERIFICATION

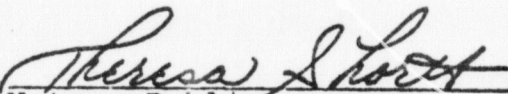
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

PAUL H. BLAUSTEIN, being duly sworn, deposes and says that deponent is the attorney for plaintiff in the within action; that deponent has read the foregoing Plaintiff's Answers to Defendants' Second Interrogatories Directed to Plaintiff Cali and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.



Paul H. Blaustein

Sworn to before me, this
8th day of October 1974.


Notary Public

THERESA SHORTT
Notary Public, State of New York
No. 41-4514343
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD., and
SCANDINAVIAN AIRLINES SYSTEM &
SCANDINAVIAN AIRLINES SYSTEMS, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendant.
-----x

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: Civil Action No.

: 73 C 1596 (JFD)
:
:

MOTION FOR RECONSIDERATION

Cali requests reconsideration for this Honorable Court's decision with respect to the defendants, particularly KLM. KLM operates a JT4 engine pool in which the engines are used on various pool member airlines interchangeably. These pool members are foreign and domestic airlines. Specific evidence exists that Air Safari, which is a U.S. airline based in Hawaii, is part of this pool with KLM.

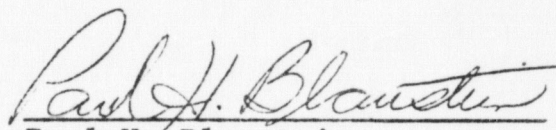
Under the broadest aspect of the issues presented, all of the engines of KLM could be used in this engine pool. The existence of the engine pool between KLM and U.S. airlines dilutes the distinction between a foreign aircraft and a domestic aircraft.

Considering all three airlines, so long as they engage in interchangeable jet engine pools the difference between foreign and domestic aircraft is diluted. The existence of the International Airlines Engine Pool should be the determinative fact.

The specific operations under a jet pool and the identification of jet engines which have been used on both foreign and domestic planes should not be determinative.

4-1968
Since KLM as well as JAL and SAS have been part of the International Airlines Technical Pool since 1964, which included JT4 engines, and since KLM operates a specific JT4 engine pool, which includes Air Safari, it is submitted that the existence of these international pool agreements dilutes the distinction made in this Court's decision between foreign and domestic aircraft. Since this Court's opinion would apply to all airlines and all aircraft, not specifically JT4 engines, the pool agreements must be considered in their fullest and general scope. For these reasons, reconsideration is requested.

Respectfully submitted,


Paul H. Blaustein
Attorney for Plaintiff
Sandoe, Hopgood & Calimafde
60 East 42nd Street
New York, New York 10017

Dated: New York, New York
September 3, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTHONY J. CALI,

Plaintiff,

73 C 1596

-against-

MEMORANDUM
and
ORDER

JAPAN AIRLINES CO., LTD., et al. :

Defendants. :

-----X

Except for the possibility of sales in the United States of aircraft embodying the invention of the patent, the answers to the interrogatories do not appear to reach the point of the earlier decision. The "pool" question appears to evaporate with the responses to defendants' second interrogatories 8, 9, 10, 14, 15 and 16. Sales of aircraft embodying the invention of the patent might, if the patent is valid and infringed, have imposed a liability for a "royalty" on the sales value of the incorporated feature, but later use would be for account of the purchaser.

The motion for reconsideration must be denied. Whether that disposes of the case will evidently depend on whether the discovery and admission procedures satisfy counsel that there has been no use (or sale) not extra-territorial or embraced by the treaty and statute provisions

referred to in the Memorandum and Order of August 20, 1974,
as interpreted in the Memorandum.

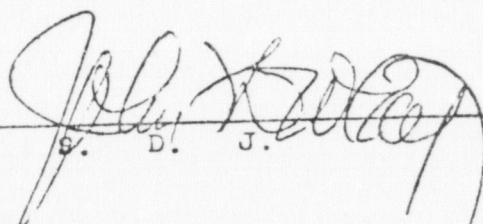
It is, accordingly,

ORDERED that plaintiff's motion for reconsideration
filed September 4, 1974, is denied.

Brooklyn, New York

November 6, 1974.

U. S. D. J.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendants.
-----X

:
:
: Civil Action No.

: 73 C 1596 (JFD)

PLAINTIFF'S ANSWERS TO DEFENDANTS THIRD REQUEST
FOR ADMISSIONS DIRECTED TO PLAINTIFF CALI

Defendants Japan Airlines Co., Ltd. (hereinafter "JAL"), KLM Royal Dutch Airlines (hereinafter "KLM"), and Scandinavian Airlines System (hereinafter "SAS") and Scandinavian Airlines System, Inc. (hereinafter "SAS, Inc.") admit that each of the following statements is true and request plaintiff Anthony J. Cali (hereinafter "Cali"), pursuant to Rule 36 of the Federal Rules of Civil Procedure to admit within thirty (30) days after service of this request, for the purpose of the above entitled action only, that each of the following statements is true. "Relevant period" shall mean the six-year period prior to filing of the Complaint in this action upon defendants.

50. Each aircraft operated by JAL which entered the United States during the relevant period was registered in the country of Japan.

Admitted.

51. Each aircraft operated by KLM which entered the United States during the relevant period was registered in the country of the Netherlands.

Admitted.

52. SAS, inc. did not within the relevant period:

(a) own or operate any aircraft;

(b) register any aircraft in its name with the Federal Aviation Administration in Oklahoma City, Oklahoma.

(a) Denied.

(b) Admitted.

53. JAL during the relevant period did not:

(a) sell internally in the United States the accused JT-4A engines incorporating the alleged invention;

(b) make the accused JT-4A engines or any portion thereof incorporating the alleged invention in the United States;

(c) export commercially the accused JT-4A engines incorporating the alleged invention from the United States, or use such engines for the manufacture of anything to be sold in or exported from the United States

Admitted, except to engines identified in "Defendant Japan Airlines Co., Ltd's Supplemental Answers to Plaintiff's Interrogatories 8, 10 a, b and 23 to JAL" of December 2, 1974.

54. KLM during the relevant period did not:

(a) sell internally in the United States the accused JT-4A engines incorporating the alleged invention;

(b) make the accused JT-4A engines or any portion thereof incorporating the alleged invention in the United States;

(c) export commercially the accused JT-4A engines incorporating the alleged invention from the United States, or use such engines for the manufacture of anything to be sold in or exported from the United States.

Admitted.

55. SAS during the relevant period did not:

(a) sell internally in the United States the accused JT-4A engines incorporating the alleged invention;

(b) make the accused JT-4A engines or any portion thereof incorporating the alleged invention in the United States;

(c) export commercially the accused JT-4A engines incorporating the alleged invention from the United States, or use such engines for the manufacture of anything to be sold in or exported from the United States.

Admitted.

56. The use of the accused JT-4A engines incorporating the alleged invention by JAL within the United States during the relevant period was in the construction or operation of JAL's aircraft and exclusively for the needs of aircraft operated by JAL.

Admitted, except for the engines identified in Request 53.

57. The use of the accused JT-4A engines incorporating the alleged invention by KLM within the United States during the relevant period was in the construction or operation of KLM's aircraft and exclusively for the needs of aircraft operated by KLM.

Admitted.

58. The use of the accused JT-4A engines incorporating the alleged invention by SAS within the United States during the relevant period was in the construction or operation of SAS' aircraft and exclusively for the needs of aircraft operated by SAS.

Admitted.

59. JAL is a corporation created and organized under the laws of Japan.

Admitted.

60. KLM is a corporation created and organized under the laws of the Netherlands.

Admitted.

61. Defendant airlines do not maintain engine overhaul or repair facilities within the United States or its possession and do not store aircraft engines or major parts for aircraft engines within the United States or its possessions.

Denied.

62. KLM has owned JT-4A engines outside of the United States in connection with KLM's operation of a JT-4A engine pool in the Netherlands.

Admitted.

63. Each member airline of the JT-4A engine pool operated by KLM in the Netherlands was a foreign airline and not a United States airline.

Admitted.

64. Exhibit M, a copy of Mr. Degling's April 8, 1974 letter and its enclosure of documents evidencing the sales (since the issuance of the Cali Patent in suit) of JT-4A engines by KLM and JAL respectively, is a complete, accurate and genuine copy and is admissible in evidence as proof of the contents thereof.

Denied.

65. Exhibit N, a copy of Mr. Kurrelmeyer's May 16, 1974 letter and its enclosure of documents evidencing the sales by SAS of JT-4A engines upon which the disputed welding procedure had been performed is a complete, accurate and genuine copy and is admissible in evidence as proof of the contents thereof.

Denied.

Paul H. Blaustein
 Paul H. Blaustein
 Attorney for Plaintiff
 Hopgood, Calimafde, Kalil,
 Blaustein & Lieberman
 60 East 42nd Street
 New York, New York 10017

VERIFICATION

Paul H. Blaustein, being duly sworn, deposes and says that deponent is the attorney for plaintiff in the within action; that deponent has read the foregoing Plaintiff's Answers to Defendants Third Request for Admissions Directed to Plaintiff Cali and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Paul H. Blaustein

Sworn to before me this 15th
day of January 1975.

Theresa Shortt
Notary

Notary Public, New York
County of New York
Certified to be a Notary Public
Commission Expires 12/28/2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES

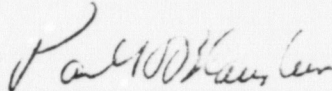
Defendants.
-----x

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: Civil Action No.

: 73 C 1596 (JFD)

NOTICE OF MOTION

Please take notice that on
at o'clock, Plaintiff will move this Court for an order
and judgment against Plaintiff dismissing the complaint as to
Scandinavian Airlines System, Scandinavian Airlines System, Inc.,
and KLM Royal Dutch Airlines as required by Rule 54(b).

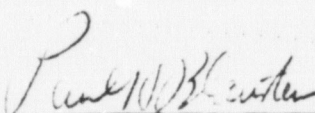


Paul H. Blaustein
Attorney for Plaintiff
Hopgood, Calimafde, Kalil,
Blaustein & Lieberman
60 East 42nd Street
New York, New York 10017

Dated: January 15, 1974

CERTIFICATE OF SERVICE

Paul H. Blaustein hereby certifies that a copy of the foregoing Notice of Motion and Plaintiff's Motion Under Rule 54(b) to Enter Judgment against Plaintiff Dismissing the Complaint as to Scandinavian Airlines System, Scandinavian Airlines System, Inc. and KLM Royal Dutch Airlines has been mailed today, January 15, 1974, to defendants' attorneys Donald E. Degling, Fish & Neave, 277 Park Avenue, New York, New York and Louis H. Kurrelmeyer, Hale Russell & Stenzel, 122 East 42nd Street, New York, New York.



Paul H. Blaustein

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.
and KLM ROYAL DUTCH AIRLINES,

Defendants.
-----x

:
:
: Civil Action No.

: 73 C 1596 (JFD)

PLAINTIFF'S MOTION UNDER RULE 54(b) TO ENTER JUDGMENT
AGAINST PLAINTIFF DISMISSING THE COMPLAINT AS TO
SCANDINAVIAN AIRLINES SYSTEM, SCANDINAVIAN AIRLINES
SYSTEM, INC. AND KLM ROYAL DUTCH AIRLINES

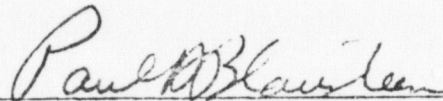
Plaintiff Cali moves this Court for an order and judgment against Plaintiff dismissing the complaint as to SAS, SAS, Inc. and KLM and requests an "express determination that there is no just reason for delay" and "express direction for an entry of judgment" as required by Rule 54(b).

Plaintiff agreed to limit his discovery last year, and since the inception of the suit, to the threshold issue involving the Treaty and temporary presence defenses since it was believed that resolution of this fundamental legal question would determine the litigation. Based upon the discovery, and this Court's prior decisions, this defense is a complete defense as to the Defendants SAS, SAS, Inc. and KLM. It is not a complete defense as to JAL because of engines which were sold by JAL to American Jet Industries as identified in Defendant JAL's Supplemental Answers to Plaintiff's Interrogatories of December 2, 1974. Therefore, at least to those engines, the issues of validity and infringement must be tried.

The Plaintiff always represented this to the Court as he wished to have the threshold issue decided and to have the decisions this Court were to make reviewed on appeal. It is

believed desirable that such issue be presented for appeal as soon as possible since the major economic interest of all the parties on this litigation are based upon the validity of this defense. Since the complaint may be dismissed as to SAS, SAS, Inc. and KLM based upon this Court's prior opinions there is ample basis for this Court to proceed under Rule 54(b) to allow Plaintiff to perfect a prompt appeal.

Respectfully submitted,



Paul H. Blaustein
Attorney for Plaintiff
Hopgood, Calimafde, Kalil,
Blaustein & Lieberman
60 East 42nd Street
New York, New York 10017

Dated: January 15, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendants.
-----X

:
:
: Civil Action No.

: 73 C 1596 (JFD)

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO DEFENDANTS'
SECOND INTERROGATORIES DIRECTED TO PLAINTIFF CALI

Plaintiff supplements and modifies its answers to Defendants' Second Interrogatories Directed to Plaintiff Cali of October 8, 1974 based upon Defendant's Japan Airlines Co., Ltd., Supplemental Answers to Plaintiff's Interrogatories 8, 10a, b and 23 to JAL of December 2, 1974 as follows:

INTERROGATORY 5

5. A. Does Plaintiff contend that during the relevant period JAL;

(1) Sold internally in the United States the accused JT-4A engines incorporating the alleged invention?

(2) Made the accused JT-4A engines or any portion thereof incorporating the alleged invention in the United States?

(3) Exported commercially the accused JT-4A engines incorporating the alleged invention from the United States, or used such engines for the manufacture of anything to be sold in or exported from the United States?

B. (1) If the answer to A1 is yes, state the facts upon which the contentions are based and specify the serial

numbers of the engines so sold.

(2) If the answer to A2 is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so made.

(3) If the answer to A3 is yes, state the facts upon which the contentions are based and specify the serial numbers of the engines so exported or used


ANSWER: No, except for engines identified in such Supplemental Answers.

INTERROGATORY 17

17. Does Plaintiff contend that during the relevant period any of the JT-4A engines sold by defendant airlines were sold in the United States?

A. If the answer to Interrogatory 17 is yes, state the facts upon which the answer is based and identify the vendee of such engines and the date of such sale.

ANSWER: No as to Defendants SAS, SAS, Inc. and KLM. No also as to JAL except for the engines identified in such said Supplemental Answers.

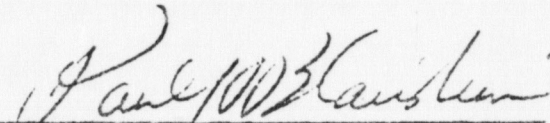

Paul H. Blaustein

Dated: January 15, 1975

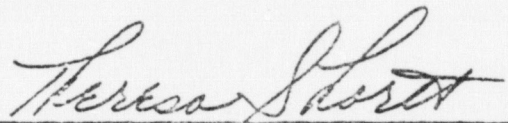
VERIFICATION

State of New York)
) ss.:
 County of New York)

Paul H. Blaustein, being duly sworn, deposes and says that deponent is the attorney for plaintiff in the within action; that deponent has read the foregoing Plaintiff's Supplemental Answers to Defendants' Second Interrogatories Directed to Plaintiff Cali and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.


 Paul H. Blaustein

Sworn to before me this 15th
 day of January 1975.


 Notary

TERESA SHORTT
 Notary Public, State of New York
 E.O. 214540
 Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
JAPAN AIRLINES CO., LTD.,	:	73 C 1596 (JFD)
SCANDINAVIAN AIRLINES SYSTEM,	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	
and KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	

----- X

DEFENDANT, KLM'S RESPONSE TO PLAINTIFF'S
MOTION UNDER RULE 54(b) TO ENTER JUDGMENT
AGAINST PLAINTIFF DISMISSING THE COMPLAINT
AS TO DEFENDANT, KLM ROYAL DUTCH AIRLINES

Defendant, KLM does not oppose plaintiff's motion before this Court for an order and judgment against plaintiff dismissing the complaint as to KLM and plaintiff's request for an "express determination that there is no just reason for delay" and an "express direction for an entry of judgment" in accordance with Rule 54(b).

Based upon the discovery had and this Court's prior decision Cali v. Japan Airlines, Inc., 380 F.Supp. 1120 (E.D.N.Y. 1974) it now appears that KLM's foreign aircraft immunity defense is a complete defense.

THEREFORE, judgment may be entered against plaintiff dismissing the complaint as to defendant, KLM Royal Dutch Airlines.

Respectfully submitted,

Donald E. Degling

Donald E. Degling
Attorney for Defendant
KLM Royal Dutch Airlines
Fish & Neave
277 Park Avenue
New York, New York 10017
(212) 826-1050

Of Counsel:

James M. Estabrook, Jr.

Dated: January 23, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendants.
----- x

RESPONSE OF DEFENDANTS SAS AND SAS, INC.
TO PLAINTIFF'S MOTION UNDER RULE 54(b)

Defendants Scandinavian Airlines System ("SAS") and Scandinavian Airlines System, Inc. ("SAS, Inc.") do not oppose plaintiff's motion dated January 15, 1975 and now before this Court, for an order and judgment against plaintiff dismissing the complaint as to SAS and SAS, Inc. and plaintiff's request for an "express determination that there is no just reason for delay" and an "express direction for an entry of judgment" in accordance with Rule 54(b).

Based upon the discovery had and this Court's prior decision Cali v. Japan Airlines, Inc., 380 F.Supp. 1120 (E.D.N.Y. 1974), it now appears that SAS's foreign aircraft immunity defense is a complete defense. We construe plaintiff's motion as a binding admission that this decision is equally applicable to SAS, Inc.

THEREFORE, judgment may be entered against plaintiff dismissing the complaint as to defendants SAS and SAS, Inc.

Dated: New York, New York
January 24, 1975

Respectfully submitted,
Hale Russell & Stentzel

By Louis H. Kurrelmeier
A member of the Firm
Attorneys for Defendants
SAS and SAS, Inc.
122 East 42nd Street
New York, New York 10017
697-1850

Of Counsel:

Alan D. Sugarman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

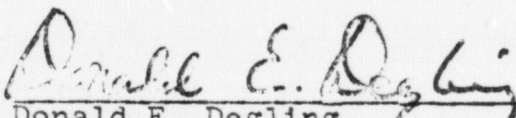
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ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
JAPAN AIRLINES CO., LTD.,	:	73 C 1596 (JFD)
SCANDINAVIAN AIRLINES SYSTEM,	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	
and KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	

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JAL'S NOTICE OF MOTION

PLEASE TAKE NOTICE THAT, on February 3, 1975 at 4:30 PM, defendant, JAL will move this Court, the Honorable John F. Dooling, Jr. presiding, United States District Court, 225 Cadman Plaza, Brooklyn, New York 11201, for an order and judgment against plaintiff dismissing the complaint as to defendant, Japan Airlines Co., Ltd., in accordance with Rule 54(b).


 Donald E. Degling
 Attorney for Defendant
 Japan Airlines Co., Ltd.
 Fish & Neave
 277 Park Avenue
 New York, N.Y. 10017
 (212) 826-1050

Of Counsel:

James M. Estabrook, Jr.

Dated: January 23, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

ANTHONY J. CALI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
JAPAN AIRLINES CO., LTD.,	:	73 C 1596 (JFD)
SCANDINAVIAN AIRLINES SYSTEM,	:	
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:	
and KLM ROYAL DUTCH AIRLINES,	:	
	:	
Defendants.	:	

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DEFENDANT, JAL'S MOTION UNDER RULE 54(b)
TO ENTER JUDGMENT AGAINST PLAINTIFF DIS-
MISSING THE COMPLAINT AS TO DEFENDANT,
JAPAN AIRLINES CO., LTD.

Defendant, JAL moves this Court for an order and judgment against plaintiff dismissing the complaint as to JAL and requests an "express determination that there is no just reason for delay" and an "express direction for an entry of judgment" in accordance with Rule 54(b).

Based upon the complaint, the discovery had in this action and this Court's decision in Cali v. Japan Airlines, Inc., 380 F.Supp. 1120 (E.D.N.Y. 1974) it is apparent that JAL's foreign aircraft immunity defense is a complete defense to plaintiff's cause of action as pleaded in his October 25, 1973 complaint. The same reasons that are recognized by plaintiff as compelling dismissal of his complaint as to the other defendants compel the dismissal also of his complaint against JAL. For each of KLM, SAS and JAL, plaintiff has admitted that the only conduct falling within his cause of action during the relevant six year period prior to his complaint is the use of the accused

engines. (Admissions 53-55)

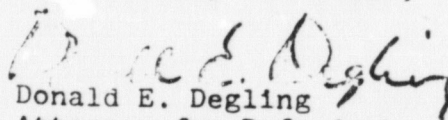
Plaintiff's purported exception as to JAL's subsequent sales (Admission 53) should be disregarded for two reasons:

First, it is irrelevant in two respects. After admitting everything requested he seeks to raise conduct which is not responsive to the limited request and which occurred in 1974, well after the 1973 complaint in this action. That conduct can therefore form no basis for plaintiff's complaint and can provide no reason for treating JAL's use during the "Relevant Period" any differently than KLM's or SAS' use is treated.

Secondly, the exception is untimely. It was served January 15, 1975, well after the extension to November 25, allowed by this Court on November 7. Rule 36(a) F.R.C.P. is conclusive in such a case that "[t]he matter is admitted" unless the Court otherwise allows.

No request for further allowance having been made and the excepted matter being irrelevant, the Admission should be deemed to be made without exception. The only claim as to JAL before this Court is then JAL's use, and JAL's foreign aircraft immunity defense being a complete defense: the 1973 complaint against JAL should be dismissed.

Respectfully submitted,


Donald E. Degling
Attorney for Defendant
Japan Airlines Co., Ltd.
Fish & Neave
277 Park Avenue
New York, New York 10017
(212) 826-1050

Of Counsel:

James M. Estabrook, Jr.

Dated: January 23, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ANTHONY J. CALI,	:
	:
Plaintiff,	:
	:
V.	:
	:
JAPAN AIRLINES CO., LTD.,	:
SCANDINAVIAN AIRLINES SYSTEM,	:
SCANDINAVIAN AIRLINES SYSTEM, INC.,	:
and KLM ROYAL DUTCH AIRLINES,	:
	:
Defendants.	:

-----x

PLAINTIFF'S RESPONSE TO JAL'S MOTION UNDER
54(b) TO DISMISS THE COMPLAINT

Defendant JAL's Motion to Dismiss the Complaint raises the question as to whether JAL's sales to American Jet Industries, which occurred between May 28, 1974 and August 27, 1974, may now be considered by this Court.

Defendant JAL filed Supplemental Answers to Plaintiff's Interrogatories 8, 10a and b and 23 on December 2, 1974.

The original interrogatories were served on August 29, 1973 and were answered on January 18, 1974.

We assume that JAL's attorneys did not have knowledge of the sale of American Jet Industries, the majority of which took place on May 28 and June 3, 1974 (see Supplemental Answers to Interrogatories 10a and b, as well as the Purchase Agreements annexed thereto dated May 10, 1974). We also assume it was inadvertent on JAL's part in not informing its attorneys before July 30, 1974, the date upon which defendant's filed their "Memorandum in Opposition to Cali's Motion for Partial Summary Judgment" and before the Hearing before Your Honor on said motion on August 8, 1974, when defendant JAL alleged that all of its engines were subject to the immunity clause. This

information which was available to JAL should have been presented earlier than it was. It would be unfair for the defendant JAL to take advantage of its own error in requiring Cali to be limited to the original admission 53.

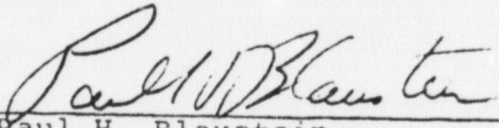
We are surprised to see the defendant taking a very technical view as to the discovery rules.

As a substantive matter, the basic issue in this case which applies to the majority of JAL's engines, as well as all of the engines of the other defendants, is that of immunity, which all parties agree should be considered as a threshold issue. Cali would be willing to dismiss the complaint against JAL as to the engines which were part of the American Jet Industries transaction without prejudice or to stay proceedings against JAL pending the determination of the appeal.

However, we believe that the defendant's Motion to Dismiss, which seeks to disregard the amendment to admission 53, should be denied.

We further contend that acts which occurred after the 1973 complaint are relevant. Patent infringements which occurred after the filing date of the complaint are matters of relevant evidence before the Court.

Respectfully submitted,


Paul H. Blaustein
Attorney for Plaintiff
Hopgood, Calimafde, Kalil,
Blaustein & Lieberman
60 East 42nd Street
New York, New York 10017

Dated: January 30, 1975
New York, New York

February 3, 1975

ORDER

It appearing that the only open matters relate to the period following the filing of the action, plaintiff not otherwise opposing dismissal on the threshold issued, it is

Ordered that the Clerk enter judgment that plaintiff take nothing as against defendant JAL and that the action is dismissed as against defendant JAL without prejudice to a later action based on any alleged infringements occurring after October 26, 1973.

John F. Dooling, U.S.D.J.

February 3, 1975

Order

On the within motion, the response of defendant KLM and defendants SAS and SAS Inc., not opposing, and it appearing that, since the claims of plaintiff against said defendants are distinct claims to impose a several liability on each, there is no just reason to delay immediate entry of final judgment in favor of each, it is

Ordered that the Clerk now enter judgment that plaintiff take nothing as against defendants Scandinavian Airlines System, Scandinavian Airlines System, Inc. and KLM Royal Dutch Airlines and that the action is dismissed as against such defendants.

John F. Dooling, U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M'FILMED

-----X
ANTHONY J. CALI,

Plaintiff,

JUDGMENT

73 C 1596

- against -

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC. *
and KLM ROYAL DUTCH AIRLINES,

CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

FEB 5 1975

Defendants.

TIME A.M.

-----X
P.M.

An order of the Honorable John F. Dooling, Jr.,
United States District Judge, having been filed on February 4,
1975, directing the Clerk to enter judgment that plaintiff take
nothing as against defendants Scandinavian Airlines System,
Scandinavian Airlines System, Inc., and KLM Royal Dutch Air-
lines and dismissing the action as against such defendants and
there being no just reason to delay entry of judgment, it is

ORDERED and ADJUDGED that the plaintiff take
nothing as against defendants Scandinavian Airlines System,
Scandinavian Airlines System, Inc., and KLM Royal Dutch Air-
lines and the action is dismissed as against such defendants.

Dated: Brooklyn, New York
February 5, 1975

Lewis Orzel
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY J. CALI,

FILED

Plaintiff,

v.

JUDGMENT

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.*
and KLM ROYAL DUTCH AIRLINES,

CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

73 C 1596

FEB 5 1975

★

Defendant
FILED

An order of the Honorable John F. Dooling, Jr., United States District Judge, having been filed on February 4, 1975, directing the Clerk to enter judgment that plaintiff take nothing as against defendant Japan Airlines Co., Ltd. and dismissing the action as against defendant Japan Airlines Co., Ltd. without prejudice to a later action based on any alleged infringements occurring after October 26, 1973, it is

ORDERED and ADJUDGED that the plaintiff take nothing as against defendant Japan Airlines Co., Ltd., and the action is dismissed as against Japan Airlines Co., Ltd. without prejudice to a later action based on any alleged infringements occurring after October 26, 1973.

Dated: Brooklyn, New York
February 5, 1975

Lewis Orgel
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY J. CALI,

Plaintiff,

v.

JAPAN AIRLINES CO., LTD.,
SCANDINAVIAN AIRLINES SYSTEM,
SCANDINAVIAN AIRLINES SYSTEM, INC.,
and KLM ROYAL DUTCH AIRLINES,

Defendants.
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Civil Action No.

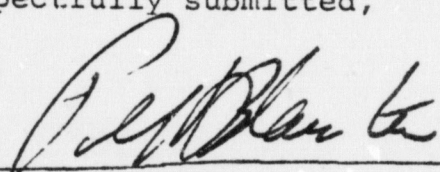
73 C 1596 (JFD)

NOTICE OF APPEAL

TO: Clerk of the Court
United States District Court
Eastern District of New York
225 Camden Plaza
Brooklyn, New York

Plaintiff appeals to the Court of Appeals for the
Second Circuit from the two judgments, each entered on February
5, 1975, dismissing the action against defendants Scandinavian
Airlines System, Scandinavian Airlines System, Inc. and KLM Royal
Dutch Airlines and dismissing the action against defendant
Japan Airlines Co., Ltd.

Respectfully submitted,


Paul H. Blaustein
Hopgood, Calimafde, Kalil,
Blaustein & Lieberman
60 East 42nd Street
New York, New York 10017
(212) 986-2480

Dated: New York, New York
March 3, 1975

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 2 day of Oct, 1972 at No. 277 Madison St. deponent served the within Joint Affidavit upon [unclear] & [unclear] herein, by delivering a true copy thereof to [unclear] personally. Deponent knew the person so served to be the person mentioned and described in said papers as the [unclear] therein.

Sworn to before me,
this 2 day of Oct 1972

Edward Bailey
.....
Edward Bailey

William Bailey
.....
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1973